

**2012  
11<sup>th</sup> Edition  
FAIR HOUSING HANDBOOK**



**A PRACTICAL REFERENCE GUIDE TO THE LAWS  
AFFECTING RENTAL HOUSING IN CALIFORNIA**

**Provided to the public by  
THE REGIONAL  
HUMAN RIGHTS/FAIR HOUSING COMMISSION  
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Sacramento, CA 95814**

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[www.hrfh.org](http://www.hrfh.org)

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**Sources of information used in this handbook include:**  
West's CA Civil Code Book  
West's CA Code of Civil Procedure Book  
CA Landlord-Tenant Practice, Second Edition, 2/2010 update  
(CEB Publication)

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*Unlawful Detainer Advisory Clinic*  
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*Unlawful Detainer Mediation Program*  
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## PREFACE

The Regional Human Rights/Fair Housing Commission is a joint powers authority created for the purpose of promoting harmony amongst the diverse populations that comprise the Greater Sacramento Region. The Commission achieves this purpose through the establishment and implementation of programs that identify and seek to eradicate discriminatory housing practices, educate the public and rental housing industry on fair housing laws, improve landlord-tenant relationships through information and conciliation services, and otherwise promote tolerance of the diverse cultures, mores, lifestyles, and beliefs of the peoples of this community in order to achieve and maintain harmony and realize equal opportunity.

This Fair Housing Handbook contains general information regarding landlord-tenant issues and housing discrimination. The information reflects federal laws and CA state laws as of January 2011. Since laws and regulations change, we have also provided the relevant citations so you may look up the current law at your local library.

**The Fair Housing Handbook is not intended to serve as a substitute for obtaining legal advice. In any legal dispute, it is best to consult with an attorney familiar with the type of law in question, or a legal aid office.**

## COMMISSION PROGRAMS

- ✓ Fair Housing Programs include investigation, mediation, testing and fair housing education and outreach
- ✓ Housing Counseling Programs include information hotline, counseling and education and outreach.
- ✓ Investigation of habitability complaints in the City of Sacramento.
- ✓ Nuisance Hearings for the City of Sacramento
- ✓ Dispute Resolution Program for the City of Citrus Heights
- ✓ Good Neighbor Hotline for the County of Sacramento
- ✓ Hate Crime Unit includes investigation, monitoring of hate crimes and training
- ✓ The Center for Human Rights Law & Advocacy (A 501 (c) (3), a non-profit public benefit corporation)
- ✓ Small Claims Advisory Clinic\*
- ✓ Small Claims Mediation Program\*
- ✓ Unlawful Detainer Advisory Clinic\*
- ✓ Unlawful Detainer Mediation Program\*

\* These services are located at the Carol Miller Justice Center,  
301 Bicentennial Circle, Suite 330, Sacramento, CA 95825

The Regional Human Rights/Fair Housing Commission is a U. S. Department of Housing and Urban Development (HUD) approved Housing Counseling Agency.

### **Commission Affiliations include:**

RCPI Board of Directors  
Sacramento Association of Realtors  
U. S. Attorney Hate Crime Task Force

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***The Solution To Fair Housing Is To Change  
The Way People Think And Act***

## **SECTION ONE** **Fair Housing Laws**

Federal, state, and local laws make it illegal to discriminate in the provision of housing based on a person's protected class. At the federal level, the **Fair Housing Amendments Act (FHAA)** prohibits discrimination on the bases of race, color, religion, sex, national origin, familial status, and disability. In CA, the **Fair Employment and Housing Act (FEHA)** prohibits housing discrimination on the same basis as the federal law, but also makes it illegal to discriminate based on marital status, ancestry, sexual orientation and source of income.

Several other laws touch on the issue of housing discrimination. **The Americans with Disabilities Act (ADA)**, a federal law, prohibits discrimination in public accommodations based on disability and does not generally apply to individual apartments. However, the ADA does apply to areas of an apartment complex or housing development that are open to the public, such as a rental office. In CA, the **Unruh Civil Rights Act** prohibits discrimination by all business establishments based upon race, color, religion, sex, national origin, familial status, disability, marital status, ancestry, sexual orientation, source of income, age and other forms of arbitrary discrimination. The renting of houses and apartments is considered to be a public accommodation for purposes of Unruh and is therefore covered by the Act.

Sources: Fair Housing Amendments Act, 42 U.S.C. 3601  
Fair Employment and Housing Act, Cal. Gov. Code sec. 12955, et seq.  
Americans with Disabilities Act, 42 U.S.C. 12101 et seq.  
Unruh Civil Rights Act, Cal. Civil Code sec. 51 et seq.

### **AMERICANS WITH DISABILITIES ACT**

Although the ADA is a comprehensive law designed to ensure equal opportunity for persons with disabilities, its application to private property, such as apartment complexes, is limited to those portions of the property that qualify as public accommodations. Public accommodations are those areas that are open to the public, with the most common example being the rental office. Those portions of an apartment complex that do not qualify as public accommodations are governed by state and federal fair housing laws. If the property participates in a government housing program, such as the Low Income Housing Tax Credit (LIHTC) Program, then regulations governing that program would apply as well.

### **CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT (FEHA)**

#### **Protected Categories**

FEHA prohibits housing discrimination on the basis of **race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income or disability**. Each of these characteristics is also referred to as a "protected class".

- "Sex" is defined to include gender identity. **Gender identity has been clarified to include gender-related appearance and expression without regard to whether it is stereotypically associated with the person's sex as assigned at birth.** As an example, a housing provider may not discriminate on the basis that a male tenant dresses in female clothing. "Sex" also includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth.
- "Familial status" means one or more persons under age 18 who reside with a parent, legal guardian, or designee of the parent or legal guardian with the parent's or legal guardian's written consent. Familial status also applies to persons who are pregnant and to persons who are in the process of gaining legal custody of an individual under the age of 18.
- "Source of income" means lawful, verifiable income paid directly to the tenant or to the tenant's representative. It is not illegal for a housing provider to ask amount or source of a tenant's income.
- "Disability" is a disease, disorder, or condition that limits a major life activity. The definition of disability, for purposes of discrimination, includes having a disability, having a record or history of such a disability, or being regarded or treated as having such a disability. Disability includes both physical and mental disabilities.
- "Sexual orientation" means heterosexuality, bisexuality, lesbian, gay, etc.

## **Prohibited Conduct**

FEHA makes it illegal for an *owner* to do any of the following:

- Discriminate or harass any person because of their protected class.
- Make any written or oral inquiry concerning the protected class of any person seeking to purchase, rent or lease any housing accommodation.
- Retaliate by harassing, evicting, or otherwise discriminating against a person who has opposed discriminatory housing practices, informed law enforcement of such practices, testified or assisted in a discrimination case, or aided or encouraged a person to exercise their fair housing rights.

**Owner** includes the lessee, sub-lessee, assignee, managing agent, real estate broker, or salesperson, or any person having any legal or equitable right of ownership or possession or the right to rent or lease housing accommodations, and includes the state and any of its political subdivisions and any agency thereof.

FEHA makes it illegal for *any person* to do any of the following:

- Make, print or publish any notice, statement, or advertisement with respect to the sale or rental of a housing accommodation that indicates any preference, limitation or discrimination based on a protected class or an intention to make any preference, limitation, or discrimination.
- Aid, abet, incite, compel, or coerce any person to do any of the acts prohibited by FEHA.
- Otherwise make unavailable or deny a dwelling based on discrimination because of a person's protected class.

Under FEHA, *discrimination* includes the following practices when based on a protected class:

- Refusing to sell, rent or lease housing accommodations.
- Refusing to negotiate for the sale, rental, or lease of housing accommodations.
- Representation that a housing accommodation is not available for inspection, sale or rental when that housing accommodation is in fact so available.
- Any other denial or withholding of housing accommodations.
- Providing inferior terms, conditions, privileges, facilities, or services in connection with those housing accommodations.
- Harassment in connection with those housing accommodations.
- Canceling or terminating a sale or rental agreement.
- Providing separated or segregated housing accommodations.
- Refusing to permit reasonable modifications to the property by a disabled person, at the expense of the disabled person, when these modifications may be necessary to afford the disabled person equal opportunity to use and enjoy a dwelling
- Refusing to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.
- Blockbusting - attempts by sellers or landlords to encourage persons to leave an area based on their protected class.
- Redlining - practices by banks that limit lending in particular areas because of the demographic character of the area.

## **Exemptions**

Under FEHA, discrimination *does not* include:

- Refusal to rent or lease a portion of an owner-occupied single-family house to a person as a roomer or boarder living within the household, provided that no more than one roomer or boarder is to live within the household, and the owner complies with that section of FEHA which prohibits discriminatory notices, statements, and advertisements; or
- The use of words stating or tending to imply that the housing being advertised is available only to persons of one sex, but only where the sharing of living areas in a single dwelling unit is involved.

While the Federal Fair Housing Amendments Act (FHAA) has additional exemptions, these do not apply in CA. FEHA is more protective, and therefore even if a particular owner is exempt under the federal law, they would not be exempt under FEHA unless one of the two situations mentioned above applies. For example, an owner renting out only one single-family home may be exempt under the FHAA, but would still be subject to FEHA.

## **DISCRIMINATION IN GENERAL:**

### **Against Families With Children**

Both federal and state fair housing laws make it illegal for a housing provider to discriminate against families with children. Families with children are those households with one or more persons under age 18 who reside with a parent, legal guardian, or designee of the parent or legal guardian with the parent's or legal guardian's written consent. Families with children also include persons who are pregnant and persons who are in the process of gaining legal custody of an individual under the age of 18.

### **Occupancy Standards**

The Department of Housing and Urban Development (HUD) has issued guidelines regarding occupancy standards that may violate fair housing laws because they adversely impact families with children. In most cases, occupancy standards should allow at least two persons per bedroom, regardless of the age, gender or relationship of the persons living in the unit. In California, the Department of Fair Employment and Housing views "two persons per bedroom plus one" as a guideline for occupancy standards. A more restrictive policy may be found to be discriminatory.

Though landlords may not use occupancy standards to discriminate against families with children, some cities have established occupancy guidelines. For example the City and County of Sacramento have created guidelines regarding the minimum square footage required for each person in a rental unit. These following standards may be enforced:

- **City of Sacramento:** Two tenants need 70 square feet of sleeping space, and each additional tenant needs an additional 50 square feet of sleeping space [Sacramento Housing Code §8.100.310].
- **County of Sacramento:** Two tenants need 70 square feet, and each additional person needs 50 square feet of sleeping space [Uniform Housing Code, Space and Occupancy Standards, §503(b)].

### **Pool Rules**

Fair housing laws make it illegal for a housing provider to limit the use of privileges, services, or facilities because of familial status. Examples of common discriminatory policies include:

- Children must be supervised by an adult at all times.
- No children under the age of 18 allowed in the pool without adult supervision.
- Exercise room for persons over the age of 18 only.

Although the above policies have been found to be discriminatory, requiring supervision of young children during specific activities may be permissible. For example, state law requires that all public swimming pools where no lifeguard service is provided display a sign on the premises stating "Warning—No Lifeguard on Duty". In addition, the sign must state "Children Under the Age of 14 Should Not Use Pool Without an Adult in Attendance". This sign must be posted in a conspicuous place near the swimming pool. [CA Code of Regulations, Title 22 §65539].

**NOTE:** In a public pool, if a person has or is suspected by management of being afflicted with an infectious disease, suffering from a cough, cold or sores, or wearing bands or bandages, and the person presents a current statement, signed by a licensed physician, confirming that the person does not present a health hazard to other pool users **or** is allowed pool use by the management, then the person cannot be denied access to the public pool. [CA Code of Regulations, Title 22 §65541].

### **Senior Housing**

The fair housing laws that make it illegal to discriminate against families with children do not apply to "housing for older persons" as defined by the Department of Housing and Urban Development (HUD), or to "senior housing" as defined by the CA Civil Code, sections 51.2, 51.3, and 51.4. Senior housing is also the exception to the CA law prohibiting age discrimination in housing.

### **Steering**

It is unlawful to discourage any person from inspecting, purchasing or renting a dwelling because of that person's protected class, or to assign any person to a particular section of a community or to a particular floor of a building because of that person's protected class. These types of conduct are known as steering. Examples of illegal practices that constitute discrimination against families with children include:

- Failing to inform a person with children about an available upstairs unit because of a desire to rent only to persons over the age of 18.
- Assigning families with children to units on one side of the complex, while assigning single persons and older persons to units on the other side of the complex.
- Voluntarily telling a person with children that the property is very quiet, that most of the tenants are

- business persons and older persons, and that there are very few children.
- Discouraging a person with children from renting an available upstairs unit through words or conduct.

## **DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

### **Accessible Units**

The Code of Federal Regulations, 24 CFR 8.27, requires owners and managers of apartment complexes with accessible units to adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with disabilities, and to take reasonable nondiscriminatory steps to maximize the use of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the owner or manager, before offering such units to a non-disabled applicant, shall offer such unit:

- First, to a current tenant in the same property or similar property owned or managed by the same company, having disabilities that require the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such tenant exists, then
- Second, to an eligible qualified applicant on the waiting list having a disability requiring the accessibility features of the vacant unit. When offering an accessible unit to an applicant not having disabilities requiring the accessibility features of the unit, the owner or manager may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

### **Parking Issues**

Because of mobility impairment, a tenant with a disability may require an assigned parking space close to their unit as a reasonable accommodation. If parking is made available to the tenants on a first-come, first-served basis, then assigning a parking space to a person with a disability is a reasonable request. However, if parking is assigned and the requested space is currently assigned to another tenant, the housing provider need not revoke the space from the current user, but may consider reassigning the space to the tenant with a disability after a 30-Day Notice or at the end of the current user's lease.

The American's with Disabilities Act (ADA) requires a minimum number of accessible parking spaces if the property provides parking for its rental office or other public accommodation. A property may choose to provide more than the required number of accessible spaces for the benefit of its disabled guests and tenants alike. However, these accessible spaces should not be reserved for the use of any one particular tenant as they are intended for use by anyone whose vehicle displays the appropriate signage.

### **Personal Care Attendants**

A tenant with a disability may require the services of a live-in personal care attendant to assist with day-to-day activities. Although the attendant lives on the property, he or she is an employee of the tenant with the disability and does not have a landlord-tenant relationship with the housing provider. In considering a tenant's request to have a live-in personal care attendant, the housing provider should not require that the attendant complete the application process or be named as a party to the rental agreement prior to granting the request. A tenant with a disability cannot be charged more rent or additional security deposit for the care attendant. However, the housing provider may hold the tenant responsible for the conduct of his or her attendant just as they would hold a tenant responsible for the conduct of his or her guest.

### **Ramps, Grab Bars, and Doorways**

A tenant's disability may require structural modifications to the unit in order to allow the tenant to fully use and enjoy their housing. A tenant who uses a wheelchair may need to install a ramp to the unit or widen doorways in order to gain entrance. A tenant whose disability limits their ability to stand independently or to maintain balance may need to install grab bars in the bathtub or shower stall. These are common modification requests that tenants with disabilities should be allowed to make at their own expense. In certain circumstances, where the property receives federal funds, the housing provider may be required to pay for the modifications.

Regardless of who is paying for the modifications, the housing provider cannot charge the tenant an additional deposit. Where the tenant has made the modifications, the housing provider may, however, require that the tenant return the unit to its original condition when the tenant moves out if doing so would be reasonable. For example, it would not be reasonable to expect a tenant who has widened a doorway to return it to its original width. However, it is probably reasonable to request the removal of grab bars installed by the tenant.



### **Reasonable Accommodations and Reasonable Modifications in General**

Fair housing laws require a housing provider to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

Reasonable accommodations include:

- Allowing a person with a disability to keep a service animal or companion animal despite a “no pets” policy.
- Not charging a person with a disability a pet deposit for their service animal or companion animal.
- Allowing a person with a disability to keep a service animal or companion that exceeds your property’s limitations on pet size and / or weight.
- Assigning a person with a disability a parking spot near their unit even though tenant parking is generally on a first-come, first-served basis.
- Widening the parking spot of a tenant in a wheelchair to allow them access in and out of their vehicle.
- Allowing a tenant with a disability to have a live-in personal care attendant (PCA) without requiring that they apply for tenancy or to be on lease.

Reasonable modifications include:

Fair housing laws also require that a housing provider permit a person with a disability to make reasonable modifications to the existing premises, at the person’s own expense, if the modifications may be necessary to afford the disabled person full enjoyment of the premises. The housing provider may not require such person to pay an additional security deposit. However, where it is reasonable to do so, the housing provider can condition permission on the person’s agreeing to restore the interior of the premises to the condition that existed before the modification. Common modifications include:

- Installing grab bars in the bathroom.
- Widening the doorway to the bathroom.
- Removing under-the-counter cabinets.
- Installing a ramp that leads to the unit.

Note: Federally funded housing projects may be required to pay for reasonable modifications.

The U.S. Department of Justice (DOJ) and the U.S. Department of Housing and Urban Development (HUD) have issued Joint Statements on reasonable accommodations and reasonable modifications that provide answers to questions including:

- What constitutes a reasonable accommodation under the Fair Housing Act?
- Can a housing provider charge an extra fee or deposit as a condition for granting a request?
- When can a housing provider request information about a tenant or applicant’s disability?
- What kinds of information, if any, can a housing provider request of a tenant or applicant who is requesting a reasonable accommodation or modification?

In general, a housing provider must grant a request for a reasonable accommodation or reasonable modification if (1) the person making the request fits the definition of a person with a disability, (2) the person needs what it is they are requesting because of their disability, and (3) the request is reasonable. For more information, please contact the Commission at (916) 444-6903. To view a copy of the Joint Statements issued by HUD and the DOJ, visit HUD’s website at [www.hud.gov](http://www.hud.gov).

### **Service and Companion Animals**

Fair housing laws require housing providers to allow a person with a disability to keep assistance animal, also known as a service animal or companion animal, as a reasonable accommodation. **An assistance animal is not a pet.** They are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or animals that provide emotional support that alleviates one or more identified symptoms or effects of a person’s disability. Because an assistance animal is not a pet, “no pet” policies and limitations on size, weight and type of pet do not apply.

Assistance animals perform many disability-related functions, including but not limited to the following:



- Guiding individuals who are blind or have low vision.
- Alerting individuals who are deaf or hearing impaired.
- Providing minimal protection or rescue assistance.
- Pulling a wheelchair.
- Fetching items.
- Alerting persons to impending seizures.
- Providing emotional support to persons with disabilities who have a disability-related need for such support.

***An assistance animal is not required to have formal training.***

**A housing provider (public or private) shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.** Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the disability-related benefit needed by the person with the disability.

***The person requesting the accommodation must show a relationship between their disability and their need for the assistance animal.*** Assistance animals are a means to provide a reasonable accommodation for an individual with a disability, but a person with a disability is not automatically entitled to have an assistance animal. Reasonable accommodation requires that there is a relationship between the person's disability and his or her need for the animal. A housing provider (public or private) is permitted to verify that the individual requesting the assistance animal is a person with a disability and that the animal is needed to assist with the disability.

The housing provider may require that the individual requesting an assistance animal verify their need. Such verification can include a confirmation by a physician, social worker, or other knowledgeable person. The Regional Human Rights/Fair Housing Commission has a *Reasonable Accommodation Packet* which includes a third-party verification form. The packet can be requested directly from the Commission by calling (916) 444-6903. As with all other disability-related inquiries, the housing provider (public or private) may not ask about the nature or severity of the resident's disability.

***Pet deposits do not apply to assistance animals.*** A housing provider may not require an applicant or tenant to pay a fee or security deposit as a condition of allowing the applicant or tenant to keep assistance animal. The tenant is responsible for the cost of repairs necessary due to damage caused by the assistance animal. These costs may be deducted from the tenant's security deposit after the tenant has vacated the unit.

***Policies limiting the size, weight, or type of pets allowed do not apply to assistance animals.*** A housing provider may not deny a service or companion animal because it exceeds size or weight restrictions applied to pets. Nor may a housing provider deny, for example, a guide dog because property policies only allow cats. These types of pet policies must be waived for assistance animals as a reasonable accommodation for the tenant or applicant with a disability.

***Policies relating to all animals on the property would apply such as having control of the animal at all times, picking up after the animals or complying with leash policies etc.***

***A housing provider may only refuse an assistance animal where specific facts exist.*** A housing provider's refusal to modify or provide an exception to a "no pets" rule or policy to permit a person with a disability to use and live with an assistance animal would violate Section 504 of the Rehabilitation Act (public housing), the Fair Housing Act, and the Fair Employment and Housing Act unless:

- There is reliable objective evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation;
  - There is reliable objective evidence that the animal would cause substantial physical damage to the property of others;
  - The presence of the assistance animal would pose an undue financial and administrative burden to the provider; or
  - The presence of the assistance animal would fundamentally alter the nature of the provider's services.
- (Sources: HUD Multifamily Occupancy Guidebook, 4350.3 REV-1; HUD Occupancy Handbook, 5/03)

**Amendment Made To The ADA, March 15, 2011 Applies Only To Commercial And Public Areas.**

Providers of rental housing may be confused over recent changes made to the Americans with Disabilities Act (ADA) relating to animals used/needed by disabled persons, effective March 15, 2011, and published in the

Federal Register. The publication is cited as the ADA's Title III: Final Rule amending 28 CFR part 36: Nondiscrimination on the Basis of Disability by Public Accommodations in Commercial Facilities.

This ADA amendment applies only to commercial and public area and the ruling states:

- ✓ A "service animal" as only being dog that has been individually trained to work or perform tasks for the benefit of an individual with a disability such as guiding for the blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack or performing other duties,
- ✓ Trained miniature horses, Section 36.302 (c), paragraph 9, for the first time would also be expected to be treated as service animals under the ADA. The rule permits the use of trained miniature horses as alternatives to dogs, subject to certain limitations. To allow flexibility in situations where using a horse would not be appropriate, the final ADA rule does not include miniature horses in the definition of "service animal". Miniature horses generally weigh between 70 and 100 pounds and measure in height 24 inches to 34 inches to the shoulders.
- ✓ ADA ruling that other animals, whether wild or domestic, do not qualify as service animals. It further states that dogs that are not trained to perform tasks that mitigate the effects of a disability, including dogs that are used purely for emotional support, are not service animals. The final ADA rule also clarifies that individuals with mental disabilities, who use service animals that are trained to perform a specific task are protected by the ADA.

Federal Fair Housing Amendments Act (FHAA) and California Fair Housing (FEHA) laws require residential housing providers to allow a person with a disability to keep an assistive animal, also known as service animal or companion animal, as a reasonable accommodation.

This new ADA ruling has raised the following questions from residential property managers and rental property owners:

- ✓ In a rental property can a disabled person be denied having a companion or emotional support animal since they do not perform work or tasks, as described in the ADA, for the disabled person?
- ✓ In a rental property can management exclude all other types of animals, including an 'untrained' dog versus a 'trained' dog which performs work or tasks for a disabled person?
- ✓ In a rental property can management deny a disabled tenant from having a trained miniature horse?

The answers to the first two questions are 'NO'. Both Federal and California fair housing laws allow disabled residential tenants to have service, assistive, or emotional support (companion) animals residing with them.

Since the ADA rule excludes a trained miniature horse from being defined as a 'service animal' the answer might be a no or a yes. There are four assessment factors:

- (1) whether the miniature horse is housebroken;
- (2) whether the miniature horse is under the owner's control;
- (3) whether the facility can accommodate the miniature horse's type, size, and weight; and
- (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

## **RELATED FAIR HOUSING TOPICS**

### **Criminal Background Checks**

It is not illegal for a housing provider to require criminal background checks of prospective applicants. Like other policies, a policy that requires criminal background checks should be applied equally and in non-discriminatory manner, meaning all applicants should be subject to the checks. Further such a policy should be reasonable and should focus only on behavior that is relevant to the landlord-tenant relationship. Housing providers should be aware, however, that a policy that denies housing to persons with any criminal record, regardless of the date or type of offense committed, may be viewed as a form of arbitrary discrimination, especially if a person is denied for prior conduct that in no way affects their ability to be a good tenant.

### **Fair Housing Poster**

Who is required to post a fair housing poster?

Fair housing posters should be displayed in any place of business where the business involves the selling or renting of dwellings. Single-family homes do not need to display a fair housing poster if an owner owns fewer than three single-family homes for rent. However, if an owner uses a real estate broker, agent, salesperson or other person in the business of selling or renting dwellings, then that person shall post and maintain a fair housing poster at any place of business where the dwelling is offered for sale or rental.

### What is a fair housing poster?

The fair housing poster **shall** be 11 inches by 14 inches and bear the “Equal Housing Opportunity” legend with the following language:

“It is illegal to discriminate against any person because of race, color, religion, sex, handicap, familial status (having one or more children), or national origin:

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the appraisal of housing
- In the provision of real estate brokerage services
- Blockbusting is also illegal

Anyone who feels he or she has been discriminated against should send a complaint to the U.S. Department of Housing and Urban Development or your local office.

Is the small sign with the words Equal Housing Opportunity and the house sign sufficient? No.

### Where do I display the fair housing poster?

A fair housing poster should be posted at any place of business where the dwelling is offered for sale or rental and at the dwelling. The poster should be prominently displayed so as to be readily apparent to all persons seeking housing. If multiple single-family dwellings are being offered for sale or rental, then the fair housing poster can be displayed only in the model unit.

### What if I don't display a fair housing poster?

Any person who claims to have been injured by a discriminatory housing practice may file a complaint with HUD, DFEH, and the Human Rights/Fair Housing Commission or through a private attorney. A failure to display a fair housing poster shall be deemed prima facie evidence of a discriminatory housing practice.

### Where can I pick up a fair housing poster?

You may get a fair housing poster by calling HUD at (916)498-5220.

## **Housing Choice Voucher Program**

The Section 8 Certificate and Voucher programs have been merged into one program called the Housing Choice Voucher Program. The Housing Choice Voucher program is a three-way partnership between owners/agents, the Public Housing Authority, and the family. The following rules apply:

- The tenant will be subjected to screening (i.e. credit check, tenant history etc.) just as other rental applicants are according to the owner's policies. This may require a fee.
- The tenant will be responsible for their security deposit.
- The tenant will be responsible for finding their own housing if they are on a Voucher program but the unit must meet the Housing Quality Standards criteria for safe, decent and sanitary housing.
- As soon as the tenant locates housing they must turn in the *Request for Tenancy Approval* to the Public Housing Authority so that it can be determined if the rent being asked is within the approved rental amount. The tenant should not move into the rental until the unit has passed inspection and meets the required Housing Quality Standards.
- The tenant will have a lease for the first year (in some situations the Public Housing Authority will allow a shorter term lease), which begins on the first day of the initial term of the lease, and terminates on the last day of the term of the lease. The tenancy then becomes a month to month agreement.
- The tenant can appeal an adverse action taken by the Public Housing Authority (such as denial of an add-on person, denial of a reasonable accommodation request, inspections, proposed termination of eligibility, etc.). Hearings are scheduled as needed and must be requested within 14 days of the disputed decision notice. If the tenant qualifies for a hearing, a hearing request form will be mailed to the tenant.
- After the first year the contract rent may, **if approved by the Housing Authority**, be increased with a 60-Day Notice to the tenant and the contract may be amended with a copy served to the Housing Authority.
- A 30-Day Notice for cause to vacate may be served on the tenant. A landlord may also serve a 3-day Pay or Quit, 3-day Perform or Quit, or a 3-day Quit notice.

In order to terminate a tenancy without cause, the landlord must serve tenant a 90-Day Notice. However, the tenancy cannot be terminated prior to the end of the initial lease term. Even if the notice period extends beyond

the end of the lease, the tenant is only responsible for their share of the rent.

- The tenant must be allowed continued occupancy at the end of lease unless the owner is dropping out of the housing program or the tenant is in a material breach of the lease. Any landlord who terminates, or fails to renew his housing contract with the Sacramento Housing and Redevelopment Agency, or other government agency, must serve the tenant with a 90-day written notice to end the tenancy [CA Civil Code §1954.535]. During that 90-day period the tenant is only responsible for their share of the rent.
- The tenant may apply for a voluntary move as long as they have fulfilled the initial lease term. In order to start a new housing assistance payment contract with a new owner/agent, the tenant is required to give a 30-Day Notice of Intention to Vacate to the current owner/agent and to the Housing Authority to determine eligibility to relocate with voucher assistance.
- Upon the Housing Authority's approval the tenant may take their Housing Choice Voucher with them after the first year to any place in the United States. (See Section Seven, page 49, for more information)

### **Immigration Status**

California Civil Code § 1940.3 prohibits a city, county, or city and county from requiring a housing provider to, among other things, compile, disclose, report, provide, or otherwise take any action regarding a tenant or a prospective tenant based on the immigration or citizenship status of that tenant. This law also prohibits a housing provider from doing any of the following:

- Making any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property.
- Requiring that any tenant, prospective tenant, occupant or prospective occupant of the rental property make any statement, representation, or certification concerning his or her immigration or citizenship status.

This law does not prohibit the housing provider from either:

- Complying with any legal obligation under federal law.
- Requesting information or documentation necessary to determine or verify the financial qualifications of a prospective tenant, or to determine or verify the identity of a prospective tenant or prospective occupant.

### **Income Standards**

Income standards are policies that require applicants to have a certain amount of income in order to qualify to live at a property. These policies are legal but should be enforced equally, regardless of marital status. For example, a landlord who allows a husband and wife to combine their income in order to meet the income standard must also allow all other persons proposing to live together to combine their incomes as well, whether they are boyfriend and girlfriend, brother and sister, or mother and daughter. Under California law, a landlord may also choose to require each individual applicant to qualify using their own income, including a husband and wife.

**Although CA law does not require a landlord to rent to Housing Choice Voucher (Section 8) recipients, where a landlord does rent to such persons, any income standard used to qualify them must only be applied to that portion of the rent that they would actually pay. For example, if the housing provider's income standard is three times the rent and the Section 8 recipient would only pay \$50.00 of the total monthly rent of \$600.00, then the recipient need only have an income of \$150.00 to qualify.**

### **Low Income Housing Tax Credit Properties**

According to Internal Revenue Service Revenue Ruling 2004-82, a landlord may not evict or terminate the tenancy of a tenant participating in the Low Income Housing Tax Credit Program without good cause. A landlord must provide a tenant participating in the Low Income Housing Tax Credit Program written notice of an eviction or non-renewal of tenancy explaining the good cause justification for the action. There is no specific list of tenant actions which constitute "good causes" for eviction or non-renewal of tenancy, and it is solely up to the courts to determine whether the landlord has shown good cause. However, if a tenant commits a serious or repeated violation of the terms of the lease including, but not limited to, failure to pay rent on time and engaging in illegal activity on the leased premises, a landlord has most likely established good cause.

**NOTE:** The California Tax Credit Allocation Committee has informed all Tax Credit property owners of this prohibition. The Committee can be reached at (916) 654-6340.

### **Mobile Home Parks**

In California, the Mobile Home Residency Law (MRL) governs the general management practices and policies of

all mobile home parks, but only addresses a limited number of fair housing issues. Fair housing laws apply to all housing providers, including mobile home parks, and in most cases provide broader protections than the MRL. Please go to Section Eight, Mobile Home Parks, page 58 for fair housing considerations related to Senior Parks, Caregivers and Service and Companion Animals.

### **Registered Sex Offenders**

Although registered sex offenders are not a protected class under the fair housing laws, California Civil Code § 290.46 (l)(2)(G) does make it illegal to use a person's status as a registered sex offender for purposes related to housing or accommodations. This includes denying a person housing because of their status as a registered sex offender. (Please see page 34 for additional information)

### **Smoking in Rental Housing Properties**

**Medical Marijuana Smoking.** The Compassionate Use Act of 1996 [HS 11362.5] approved by the people of the State of California ensures that seriously ill Californians have a right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine or any other chronic or persistent medical symptom that either (A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-226) or (B) If not alleviated may cause serious harm to the patient's safety or physical or mental health.

- ✓ Under this act The Health Department shall establish and maintain a **voluntary program** for the issuance of identification cards to qualified patients who satisfy the requirements and voluntarily apply to the identification card program. **It shall not be necessary for a person to obtain an identification card in order to claim the protections of this law. However, if a person does not have a valid identification card a Landlord can ask for verification of the need of medical marijuana from the person's attending physician.**
- ✓ No person or designated primary caregiver (an individual who has consistently assumed responsibility for the housing, health, or safety of that person) in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established under this law.
- ✓ A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient. Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.
- ✓ Nothing in this law shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under and of the following circumstances;
  - (a) **In any place where smoking is prohibited by law.**
  - (b) **In or within 1,000 feet of the grounds of a school, recreation center, youth center, unless the medical use occurs within a residence.**
  - (c) On a school bus.
  - (d) **While in a motor vehicle that is being operated.**
  - (e) **While operating a boat.**

A 2008 California Supreme Court employment discrimination case suggests that the CUA does not require an owner to allow the growing, smoking and/or possession of medical marijuana in residential rental property as a reasonable accommodation for a disabled person (*Ross v. Ragingwire Telecommunications* 42 Cal.4th 920). The reasoning used in deciding the case could be extended to a case where an applicant or resident seeks an accommodation for medical marijuana use in rental housing.

Under the current law, if a tenant makes a reasonable accommodation request to be allowed to use medical marijuana in their rental property, the property manager may deny the request. However, it is strongly recommended that the property manager consult with their own legal counsel, as the law is not settled in this area. Tenants may submit a reasonable accommodation request, as the property manager may grant the accommodation. The resident is at risk for an eviction if they have not been granted a reasonable accommodation to smoke medicinal marijuana, as most residential leases contain a clause restricting the use of illegal drugs on the premises.

**Tobacco Smoking.** Persons with disabilities are entitled, under CA Fair Employment and Housing Act, to reasonable accommodations to ensure equal access to and enjoyment of their housing. Under the law of this state the Legislature has determined that the definition of ‘physical disability’ requires a limitation upon a major life activity. Some courts have found that persons who are hypersensitive, such as asthmatics, to tobacco smoke are disabled because the tobacco smoke interferes with the major life activity of breathing. A reasonable accommodation, *if requested*, by a tenant who is affected by the smoke would be to relocate them to another unit or if there is no other option to consider allowing them out of their lease without a penalty. Another resolution might be to establish non-smoking areas adjacent to that unit. There is no law that prohibits management from imposing smoking restrictions inside and outside the property. Smokers are not a protected class. However, a smoker cannot be refused a rental for the reason that he/she smokes, but if there are no-smoking policies the tenant must comply with that policy the same as any other policy that is in place at that property. All policies should be explained very clearly at the time of move in to avoid any future conflicts.

**As of January 1, 2012, a section was added to Civil Code §1947.5 which authorizes a landlord of a residential dwelling unit to prohibit the smoking of tobacco products on the property, in a dwelling unit, in another interior or exterior area, or on the premises on which the dwelling unit located.**

**Every lease or rental agreement entered into on or after January 1, 2012, for a residential dwelling unit on property or any portion of which the landlord has prohibited the smoking of cigarettes or other tobacco products pursuant to this article shall include a provision that specifies the areas on the property where smoking is prohibited, if the lessee has not previously occupied the dwelling unit.**

**For a lease or rental agreement entered into before January 1, 2012, a prohibition against the smoking of cigarettes or other tobacco products in any portion of the property in which smoking was previously permitted shall constitute a change of the terms of tenancy, requiring adequate notice in writing.**

**CA Civil Code §1927 states that tenants are entitled to the quiet enjoyment of their home. A court would have to determine if second hand smoke was interfering with a tenant being denied the quiet enjoyment of their home. On the other hand the court might also have to decide if a smoker is being denied his right to the quiet enjoyment of his home if not allowed to smoke.**

**In addition to CA Civil Code §1927, there is also CA Civil Code §1941.1 and CA Health & Safety Code §179203, which require the landlord to guarantee that the rental property is and will remain habitable (Warranty of Habitability). Another possible court decision might be needed to determine whether or not a person’s smoking results in an ‘uninhabitable’ condition.**

#### **AVAILABLE FORUMS FOR ENFORCING FAIR HOUSING RIGHTS**

The Regional Human Rights/Fair Housing Commission (Commission) is one of the forums available to you to seek redress for allegations of housing discrimination. The Commission is a joint powers agency created by the County of Sacramento and the Cities of Sacramento, Citrus Heights, Elk Grove, and Rancho Cordova. The Commission is authorized to enforce state and federal fair housing laws. The Commission does this through the investigation, conciliation, and mediation of housing discrimination complaints. Where litigation is approved, enforcement is sought through state or federal court. If you believe that you have experienced housing discrimination and wish to file a complaint with the Commission, call (916) 444-6903 or (916) 444-0178. You may also obtain a copy of the complaint form by logging on to [www.hrff.org](http://www.hrff.org) and printing out a copy. Completely fill out the complaint form and return it by either mail or in person to: RHR/FHC, 1112 I Street, #250, Sacramento, CA 95814.

Other forums include:

#### **Private Attorneys**

You may hire a private attorney to investigate your complaint and commence litigation in state or federal court on your behalf. You may contact the Sacramento County Lawyer Referral and Information Service at (916) 564-6707. You do not need to file a complaint with an administrative agency prior to filing a private action of housing discrimination. If you choose to file a private action in state or federal court, you must do so within two years of the date of discrimination.

#### **Department of Fair Employment and Housing (DFEH)**

DFEH is the state agency authorized to investigate housing discrimination complaints and enforce state and federal fair housing laws. If you choose to file a complaint with DFEH, you must do so within one year of the date of discrimination. (800) 884-1684 or (916) 478-7178, 2218 Kausen Drive, #100, Elk Grove, CA 95758-7178.

### **U.S. Department of Housing and Urban Development (HUD)**

HUD is the federal agency authorized to investigate housing discrimination complaints and enforce federal fair housing laws. If you choose to file a complaint with HUD, you must do so within 180 days for a claim related to accessibility in federally-funded housing (Rehabilitation Act Section 504 violations) and within one year of the date of discrimination for other violations. You can file a housing discrimination complaint by calling (800) 669-9777, by filing online at [www.hud.gov](http://www.hud.gov), or by printing out the online complaint form and mailing it to Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5204, 451 Seventh St. SW, Washington DC 20410-2000.

## **SECTION TWO** **General Information for Landlords and Tenants**

Renting a property is a partnership between the landlord/agent and the tenant(s). Misunderstandings often occur through poor communication and lack of knowledge of the rights and responsibilities of both the landlord and the tenant. Tenant's duties are described in CA Civil Code §§1929 and 1941.2, Landlord's duties are described in CA Civil Code §1941.1.

The following information is a brief overview of general suggestions which may be helpful in creating a better relationship between the landlord/agent and the tenant. Selection of the qualified tenant who will take care of the rental unit is very important and just as important is the selection of a property owner who will maintain the property according to the housing code standards established by CA law.

Although a verbal agreement for a period of less than 12 months is legal, for the protection of both the tenant(s) and the landlord/agent it is advisable to have a written document establishing terms and conditions of the rental agreement.

### **LANDLORDS:**

#### **Accepting/Denying Applicant**

Sometimes tenants are denied opportunities to rent for legitimate reasons, such as having bad credit or unsatisfactory references. A landlord is not obligated to rent to an individual if there is a legitimate business reason for denying them. However, federal and state laws prohibit landlords from denying an applicant just because they belong to a protected class. After a tenant is accepted the documents they receive will define their rights and responsibilities. These agreements should be in writing to avoid future misunderstandings, although oral agreements for a period of one year or less are also valid.

#### **Application to Rent**

Each adult applicant should fill out an application form, which normally requests background information and could include the following:

- ✓ Social Security number.
- ✓ Date of birth.
- ✓ Drivers license number or other CA identification (the landlord should visually look at the identification to be certain it is the same person applying. After the tenant is *accepted* this may be photocopied and put in the tenant's file).
- ✓ Place of employment and salary.
- ✓ Current and last address.
- ✓ Proposed occupants.
- ✓ Person to contact in case of emergency.
- ✓ Vehicle type and license number.
- ✓ Current income.
- ✓ Bank information.
- ✓ Creditor information.

Reasonable questions such as these can be asked:

- ✓ Have you ever been evicted?
- ✓ Have you ever been convicted for selling, distributing or manufacturing illegal drugs?
- ✓ Have you ever filed for a bankruptcy?

All requested information on the form should be completely filled out with a signature verifying that the information is true and that the applicant authorizes verification of this information by the use of services such as tenant screening and credit checking, etc.

- ✓ The landlord should take the time to check out the information and make a selection based on the first qualified applicant(s).
- ✓ If a non-tenant co-signer is acceptable, this person should go through the same screening process.

### **Condominium Rentals [Civil Code 1368]**

**As of January 1, 2012 a Home Owner Association for a common interest development, cannot prohibit an owner from renting his unit unless the governing documents prohibited the rental of the unit at the time the property owner purchased the unit.**

### **Credit Reports [Civil Code 1785.1 -1785.36]**

The landlord will normally check each adult applicant through a credit-reporting agency, unlawful detainer service and tenant history search before making the decision whether to rent to an applicant. Housing Choice Voucher holders should also be screened. Prior to being approved for a Housing Choice Voucher the tenant(s) has had a criminal background check done by the Housing Authority and in most cases will not be granted a voucher if there has been drug-related or violent criminal activity in the past 5 years. Landlords should be encouraged to run their own background check. If a family has a history of writing bad checks, they may still be eligible for housing assistance, but the landlord may want to ask some additional questions about this history before accepting them as renters. In 1998 the screening fee was established at \$30.00 to be adjusted annually according to the Consumer Price Index. As of January 2010 the landlord may charge up to, but not more than \$42.41 for each credit check. It may be increased in the first quarter of 2012 according to the Consumer Price Index.

The landlord or his/her agent shall provide the applicant with a receipt, which itemizes out-of-pocket expenses and time spent to obtain and process the applicant's information. If the applicant paid the landlord or agent a credit check fee, then a free copy of the consumer credit report shall also be provided personally or by mail to the applicant upon request. The applicant can then check the accuracy of the report.

Effective July 21, 2011 if an applicant is denied because of the credit report the tenant must be given their credit score. The report must include the credit score, how the scores were used and who provided the credit scores. If there are no vacancies, unless the tenant gives permission, the landlord should not request a credit report. If a credit check fee is collected and a credit check is not run on the applicant the credit check fee should be refunded (this might occur if several persons have applied and early in the process an applicant is accepted negating the need to do additional screening). [CA Civil Code §1950.6].

The Federal Trade Commission (FTC) has imposed new 'Red Flag' requirements for all property owners and property management companies to help combat identity theft. Property owners and property management companies must develop a written program that identifies and detects relevant warning signs (or 'red flags' of identity theft). An example would be if there is a substantial difference between the address in a prospective resident's credit report than that provided on the application. The owner should check the address against other information in the application, or ask the applicant about the address discrepancy. For more information on compliance you may contact [RedFlags@ftc.gov](mailto:RedFlags@ftc.gov) or go to <http://ftc.gov/opa/2007/10/redflag.shtm>.

### **Important Reminders Before Tenant Moves In**

- ✓ The landlord should review all policies and the rental agreement with the applicant before the rental agreement is signed.
- ✓ The landlord should walk through the rental unit with applicant(s) and have a check-in form completed and signed by both landlord and tenant(s) with copy given to the renter and a copy retained by management.
- ✓ The landlord should take pictures of the unit prior to move in.
- ✓ The landlord should give copies of all signed documents to the tenant(s).
- ✓ The landlord may have specific addendums to attach to the rental agreement which must be signed by the tenant and are legally enforceable. Examples of addendums which might be used:
- ✓ Examples of Addendums which may be attached to the rental agreement: '**Renters Insurance Addendum**' (this may be mandatory before a tenant will be accepted). Except in rare cases or damage due to owner's negligence the tenant's possessions are not covered by the owner's liability insurance; '**Pet Addendum**', which would describe the pet, deposit amount and rules regarding care and conduct of animals on the property; '**Service/Companion Animal Addendum**', which would describe the

- service/companion animal and rules regarding care and conduct of animals on the property; '**Drug Free Addendum**', which specifies that the tenant, guests or other persons shall not engage in any criminal activity on the property without the risk of their rental agreement being terminated; '**Smoke Detector/Carbon Monoxide Addendum**', which makes the tenant responsible if the detector is battery operated that it will be in operating condition at all times and also that the tenant will inform the landlord immediately if it is defective; '**Smoke Free Addendum**', which is used to clarify whether there is a specific acceptable smoking area or if smoking is prohibited entirely in and on the property; '**Pest Control Addendum**', which notifies the tenant if there is a periodic pest control service on the property; '**Mold Addendum**', which can suggest actions to be taken by the tenant to curtail the possibility of mold growth and also requires the tenant to inform the landlord immediately if there are signs of mold growth or any moisture/water leaking problems.
- ✓ The landlord should provide each tenant with a method to contact a responsible party (owner or agent) to report emergencies or to request repairs. It is preferable to have a written form for repair requests and, with the exception of emergency situation; repairs should be made in a reasonable period of time.
  - ✓ It is advisable for a tenant to have renter's insurance. Some apartment communities make it mandatory that the tenant has renter's insurance before they will be accepted as a renter. In the event there is damage to the tenant's rental unit, the owner's insurance company will normally pay the owner for the cost of property damage but would not cover the cost of the loss of personal property owned by the tenant, even if the damage was not caused by the tenant or their guests.
  - ✓ A tenant has the right of privacy. Unless the tenant gives oral permission for entry, in order to make agreed repairs or to supply agreed services the landlord must give a written notice 24 hours in advance and enter only during normal business hours. Emergencies or abandonment are an exception to this law. [CA Civil Code §1954].
  - ✓ The landlord is entitled to expect rent to be paid on time and in the proper amount.
  - ✓ The landlord is entitled to deduct from the security deposit any costs connected with damage beyond normal wear and tear, actual damages, and lost rent. [CA Civil Code §1950.5].
  - ✓ If a tenant requests a reasonable accommodation or modification due to a disability, the landlord must grant this request if the accommodation or modification is necessary for the individual to enjoy or use the services offered to other residents.
  - ✓ After receiving a written notice of termination from the tenant, the landlord must notify the tenants of their right to request a pre-move out inspection up to two weeks prior to move out.[CA Civil Code §1950.5 (f)].

### **Landlord's Mandatory Disclosures**

#### **Death of a Tenant [CA Civil §1710.2]**

Owners may be liable for failing to disclose to prospective tenants that a death has occurred within last 3 years. However, owners are immune from liability for failure to disclose that a previous occupant died from, or was afflicted with AIDS. The owner is not immune from liability for failing to answer a direct question concerning deaths on the property. (See Page 38 for Additional Information)

#### **Illegal Substance Contamination [CA Civil Code §1940.7.5]**

The owner of a residential dwelling unit who knows that any release of an illegal controlled substance has come to be located on or beneath that dwelling unit shall give written notice to the prospective tenant prior to the execution of a rental agreement by providing that individual with a copy of any notice received from law enforcement or any other entity. Failure of the owner to provide such notice shall subject the owner to actual damages and any other remedies provided by law. In addition, if the owner has actual knowledge of the presence of any release of an illegal controlled substance and knowingly and willfully fails to provide written notice to the renter, the owner is liable for a civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation, in addition to any other damages provided by law.

#### **Lead-Based Paint Hazard [Lead-Based Paint Hazard Reduction Act of 1992]**

Landlords are required to disclose information on lead-based paint and lead-based paint hazards before the sale, lease, or rental of housing built before 1978. The rule requires sellers and landlords to disclose available lead information about the common areas (i.e. parking lot, and laundry rooms). In buildings built prior to 1978 new renters moving in must be given a lead disclosure form which states there is a possibility that there may be lead in the unit. This notification does not have to be disclosed to existing renters. In order to comply with the disclosure requirement, a seller or landlord must:

- ✓ Disclose all known lead-based paint and lead-based paint hazards in the home and any available reports on lead in the housing.

- ✓ Give renters the EPA pamphlet Protect Your Family from Lead in Your Home. For a copy of the brochure, sample disclosure forms, or the law, call the National Lead Information Clearinghouse at (800) 424-LEAD (5323). Include warning language in the lease, as well as signed statements from all parties verifying that all requirements were completed.
- ✓ Retain signed acknowledgments for three years, as proof of compliance. A landlord who fails to comply with the law may be sued for triple the amount of damages. In addition, they may be subject to civil and criminal penalties.
- ✓ In addition, effective 12/22/08, in pre-1978 buildings any time the owner undertakes repairs or renovation that may disturb more than two square feet of paint, the owner must distribute the EPA pamphlet called "Renovate Right".
- ✓ For information on "Lead: Renovation, Repair and Painting Program" rule, which will take effect in April 2010 visit: [www.epa.gov/lead](http://www.epa.gov/lead).
- ✓ For copies of the educational brochures, call 800-424-5323.

Important Note: The following are types of housing not affected by this rule:

- ✓ Zero-bedroom dwellings (i.e., lofts, efficiencies, and studios).
- ✓ Units leased for 100 days or fewer.
- ✓ Housing for the elderly and/or disabled (unless children reside there).
- ✓ Housing that has been inspected and found to be free of lead-based paint.

#### **Owner's Address [CA Civil Code §1962 et seq.]**

Any owner of a residential rental or individual signing a rental agreement on behalf of the owner shall include in the agreement the name, telephone number, and usual street address where personal service of process may be made on that owner, or anyone who is authorized to act on behalf of that owner, as well as the name, telephone number and address of the person to whom rent shall be paid, and in what form rent should be paid. If rent payments may be made personally, the agreement shall include the days and hours that someone will be available to receive the payment. The owner has the option of establishing an account at a financial institution to which rent can be paid, provided the institution is within five miles of the property. If the owner chooses this option, he/she must disclose in the agreement the name and address of the institution, as well as information on how to establish an electronic funds transfer procedure for paying the rent. A party who enters into a rental agreement on behalf of the owner who fails to comply with this section is deemed an agent of each person who is an owner:

- ✓ For the purpose of service of process and receiving and receipting for notices and demands;
- ✓ For the purpose of performing the obligations of the owner under law and under the rental agreement;
- ✓ For the purpose of receiving rental payments, which may be made in cash, by check, by money order, or in any form previously accepted by the owner or owner's agent, unless the form of payment has been specified in the oral or written agreement, or the tenant has been notified by the owner in writing that a particular form of payment is unacceptable.
- ✓ If the address provided by the owner does not allow for personal delivery and the tenant can show proof of mailing to the name and address provided by the owner, then it is presumed that the notice or rent is received by the owner on the date posted.
- ✓ Nothing in this section limits or excludes the liability of any undisclosed owner.

#### **Pesticide Contracts**

When an owner contracts with a registered structural pest control company, the company shall provide to the owner, or owner's agent and the tenant where work is to be done with clear written notice which contains the following:

- ✓ the pest to be controlled;
- ✓ the pesticide or pesticides proposed to be used, and the active ingredient or ingredients;
- ✓ the warning Caution – Pesticides or Toxic Chemicals

If within 24 hours following application you experience symptoms similar to common seasonal illness comparable to the flu, contact your physician or poison control center and pest control company.

If it is for periodic pest control service, they must provide tenants with the frequency with which the treatment will be done.

Also, owners, who contract for periodic structural pest control for a unit, must provide both current tenants and subsequent tenants with a copy of the notice provided by a registered pest control company. Not all necessary repairs fall under the implied warranty of habitability. For more complete information refer to CA Business & Professional Code §8538.

### **Possible Asbestos**

Under Proposition 65, CA Health and Safety Code §25249, owners of rental property built before 1981 are required to disclose to residents that the building does or may contain asbestos or other chemicals specified in the law as causing cancer or other reproductive harm. Even if no testing has been done, dwellings built prior to 1981 are assumed to contain asbestos. Though testing is not required, once done residents must be notified of the results.

### **Minimum Legal Obligations of the Landlord [CA Civil Code §1941.1]**

In general, a landlord must repair all problems that fall under his/her minimum obligations.

- ✓ The roof, doors and windows are weatherproof (for example, no leaky roofs or broken windows).
- ✓ The plumbing works, including hot and cold water, and there is a working sewer or septic tank connection.
- ✓ The heater is in safe, working condition. (CA Residential Code requires minimum temperature 3 feet above the floor and 2 feet from exterior walls to be 68 degrees)
- ✓ The lights and wiring work and are safe.
- ✓ Floors, stairways and railings are in good repair.
- ✓ When it is rented, the dwelling is clean, with no piles of trash or garbage and no vermin or rodents.
- ✓ The landlord provides enough cans or bins in good condition with covers for the disposal of garbage and rubbish.

NOTE: Code enforcement officials are limited to citing for the named violations for any of the issues listed in the above Civil Code.

### **Miscellaneous Additional Landlord Obligations**

#### **Carbon Monoxide Detectors – Residential Building Safety [Health & Safety Code §§ 17926 & 17926.1]**

Carbon monoxide detectors must be installed in existing dwellings intended for human occupancy that have a fossil fuel burning appliance, a fireplace, or an attached garage. This includes all existing single-family dwelling units, including individually owned condominiums, intended for human occupancy on or before July 1, 2011. **All other existing dwelling units intended for human occupancy on or before January 1, 2013.** The detector may be battery powered a plug-in device with battery backup, or hard-wired into the dwelling unit with a battery backup. It is recommended that every home have at least one carbon monoxide detector for each floor of the home and within hearing range of each sleeping area. The alarm should be located at least 6 inches from all exterior walls and at least 3 feet from supply or return vents. The alarm should not be in the following areas: outside the building; in or below a cupboard; in a damp or humid area; directly above a sink or stove/oven; next to a door or window or anywhere that would be affected by drafts; where the air flow to the alarm would be obstructed by curtains or furniture; or where dirt or dust could collect and block the sensor and stop it from functioning. A tenant is responsible for notifying the owner or the owner's agent if the tenant becomes aware of an inoperable or deficient carbon monoxide detector within his or her unit. An owner of rental units is required to test and maintain the CO devices in the dwelling units. An owner or an owner's agent may enter a rental unit for the purpose of installing, repairing, testing, and maintaining CO devices, pursuant to the authority of §1954 of the Civil Code (24 hour notice). An owner not in compliance will receive a 30 day notice to correct. If not corrected a maximum fine of two hundred dollars (\$200) may be imposed for each offense. **NOTE:** If the State Department of Housing and Community Development (HCD), in consultation with the State Fire Marshal, determines that a sufficient amount of tested and approved carbon monoxide detectors are not available to property owners to meet the requirements of this law, the Department may suspend enforcement of the requirements of the law.

#### **Install and Maintain Locks [CA Civil Code §1941.3]**

Landlords are required to install and/or maintain dead bolt locks on each main swinging door giving entry to dwelling units, including doors in common areas leading to such unit, and to install locking mechanisms or security devices on windows designed to be opened in these units. These locks must meet specific requirements. Some exceptions apply. Tenants are responsible for notifying owners or their agents upon learning of a defective locking or security device. The locks must comply with all fire and life safety codes and codes relating to accessibility for the disabled.

#### **Required Caretaker/Manager – [CA Code Of Regulations, Title 25, Article 5, §42]**

A manager, janitor, housekeeper, or other responsible person shall reside upon the premises and shall have charge of every apartment house in which there are 16 or more apartments, and of every hotel in which there are

12 or more guest rooms, in the event that the owner of an apartment house or hotel does not reside upon said premises. Only one caretaker would be required for all structures under one ownership and on one contiguous parcel of land. If the owner does not reside upon the premises of any apartment house in which there are more than four but less than 16 apartments, a notice stating the owner's name and address, or the name and address of the owners' agent in charge of the apartment house, shall be posted in a conspicuous place on the premises.

### **Smoke Detectors**

All dwellings that are used for sleeping purposes shall be provided with smoke detectors. For dwelling units, intended for human occupancy, constructed prior to January 1, 1985 only one battery operated smoke detector is required. However, when there has been an addition, alteration or repair that exceeds \$1,000 and a permit is required, the smoke detectors must receive their power source from the building wiring and as with all new construction, after January 1, 1985, there shall be a smoke detector in each sleeping room and at a point centrally located in the corridor or area giving access to each separate sleeping area. When the dwelling unit has more than one story and in dwellings with basements, a detector shall be installed on each story and in the basement.

### **Usable Phone Jack [CA Civil Code §1941.4]**

Rental property owners must provide one 'usable phone jack' in each rental unit. The owner is also responsible for maintaining and repairing all "inside telephone wiring". "Inside telephone wiring" is defined as that portion of the telephone wire that connects the telephone network at a 'demarcation point,' which is determined by the telephone corporation in accordance with orders of the California Public Utilities Commission.

## **TENANTS**

### **Before Moving In**

Before agreeing to rent the residential unit, house, apartment, duplex, etc., a tenant should try to determine if the property is well managed. How is this done?

- ✓ If possible ask other tenants

Does the management/owner make repairs promptly?

Are tenants responsible for any repairs, yard work or utilities?

- ✓ Look around

Are the public areas clean and absent of accumulation of trash or clutter? Are there inoperative vehicles parked in the parking area?

- ✓ Is the landscaping maintained?
- ✓ Are there boarded up windows or other signs of neglect?
- ✓ If there are children, will there be any place for them to play?
- ✓ Call the police or sheriff's substations and ask if there are complaints about the property from either the neighbors or the tenants.
- ✓ At time of applying ask about the policies

The tenant should also ask about the rent payment policy (when is it due, where is it paid and is there a late charge?).

Before signing the rental agreement and accepting the rules and regulations the tenant should understand and agree to all the terms. The tenant should ask questions if there is something which is not clear.

Are there rules governing the behavior of children on the property? Certain rules, such as those requiring supervision of all children (under the age of 18) at all times, may be overly restrictive and in violation of fair housing laws.

### **Holding Deposits**

A holding deposit is money given by an applicant to a landlord so that they will hold the rental property and not rent to anyone else. Until the application is approved and all required money for rent and deposit(s) is paid the applicant cannot move into the rental. If the unit is not available at the agreed date of move in, or if the applicant is not accepted by the landlord, or if the landlord rents the apartment to someone else, the full amount of the holding deposit should be returned.

If the applicant changes his mind about moving in, the owner may be entitled to keep a portion or all of the holding deposit for the cost of re-advertising, lost rent or other damages. At the time of giving the landlord the holding deposit, the applicant should ask the landlord for a written receipt which clearly states what the agreed terms/conditions of the holding deposit are.

If the applicant feels that they have suffered damages because of a landlord's wrongful retaining of the deposit, the applicant may consider writing a letter to the landlord requesting the deposit refund and, if necessary, going to Small Claims Advisory Clinic at the Carol Miller Justice Center for advice.

### **Minimum Legal Obligations Of The Tenant [CA Civil Code §1941.2 & §1929]**

A landlord may not be responsible for repairing damage that resulted from the tenant being in substantial violation of his/her affirmative obligation under the law. The tenant has a duty to:

- ✓ Keep his/her part of the premises clean and sanitary.
- ✓ Properly dispose of garbage and other waste in a clean and sanitary manner.
- ✓ Properly use and operate all electrical, gas and plumbing fixtures and keep them as clean and sanitary as possible.
- ✓ Not permit any person to willfully or wantonly destroy, deface, impair or remove any part of the structure or dwelling unit, equipment, or parts of the equipment.
- ✓ Only utilize the premises for the purposes for which they are rented (to occupy the premises as a place for living, sleeping, cooking, etc.).
- ✓ Repair all deterioration or damage caused by tenant or tenant's guest for recklessness or negligence.

### **Rights and Responsibilities**

- ✓ A tenant has the right to live in a rental unit which is in good repair. The tenant has the responsibility of taking care of the property through good housekeeping and proper use of appliances and not to use the property for purposes other than that for which it was rented. [CA Civil Code §§1929 and 1941.2].
- ✓ For protection of both the landlord and the tenant and to avoid later security deposit disputes there should be a walk through inspection. This should be documented in **writing** as to the condition of the unit noting any existing damage. Pictures may be taken to document the condition. **Both** the landlord and the tenant should have a signed copy of the 'walk through' inspection.
- ✓ The tenant should notify the owner promptly (preferably in writing) of any:
  - Water damage caused by a leaky roof, broken or leaking plumbing or improperly sealed windows etc.
  - Electrical problems.
  - Mold.
- ✓ The tenant should pay the rent according to the contractual arrangement made at the time of move in.
- ✓ The tenant is responsible for the actions of any friends, relatives or guests who are visiting or living in the rental unit. This would include any damages or violations of the rules/policies.
- ✓ Do not make any alterations or improvements to the property without written approval of the landlord.
- ✓ If the tenant is disabled and has the need of a reasonable accommodation or a reasonable modification, the tenant should submit a written request to the landlord/agent during or prior to moving in. The list should include:
  - Name of tenant requesting modification or accommodation.
  - Telephone number.
  - Address.
  - Describe the change in a policy, procedure or regulation being requested.
  - Describe the reason for the request.
  - Include verification of the disability and the need for modification or the accommodation, preferably from a medical professional.
  - Submit a copy of this request to the owner or the owner's agent.

## **SECTION THREE**

### **During The Tenancy – General Policies & Laws**

#### **Day Care [CA Health & Safety Code §1596.70] et. seq.**

Under the CA Health and Safety Codes, it is legal to provide day care in a rental home.

All day care providers must apply for a license pursuant to CA Health and Safety Code §1597.54.

All day care is defined as one that limits the number of children to no more than eight without an additional adult attendant. Please refer to the CA Health & Safety Code for additional restrictions.

All family day care homes for children shall maintain in force either liability insurance covering injury to clients and guests in the amount of at least one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand (\$300,000) in the total aggregate amount or a bond in the aggregate amount of three hundred thousand

dollars (\$300,000). In lieu of the liability insurance or the bond, the family day care home may maintain a file of affidavits signed by each parent with a child enrolled in the home that meets the requirements of this subdivision. The affidavit shall state that the parent has been informed that the family day care home does not carry liability insurance or bond according to standards established in the state. As long as a tenant is in compliance with all of the applicable statutes and laws, the tenant has a right to run a day care facility in the rental unit.

### **Guests**

The general provisions of California landlord-tenant law are contained in CA Civil Code §§1940-1954.1 and apply to "persons who hire." CA Civil Code §1925 defines hiring as "a contract by which one gives to another the temporary possession and use of property, other than money, *for reward*, and the latter agrees to return the same to the former at a future time". Persons who hire do not include occupants of hotels or motels where the innkeeper retains a right of access to and control of the dwelling unit and provides those services listed in CA Civil Code §1940(b)(2). Because the definition of hiring requires a contract and implies consideration by both parties, a friend or relative who is invited by a property owner as a guest and then is later asked to leave does not appear subject to the landlord-tenant provisions. This is assuming that there is no agreement involving money, services, or any other form of consideration in exchange for room or room and board. Guests can be asked to leave the property at any time and a refusal to leave would be considered trespass under CA Penal Code §602 (o). Review rental policies for guest rules that may limit the length of time a guest(s) can stay.

### **Harassment [CA Civil Code §1940.2]**

For the purpose of influencing a tenant to vacate a dwelling it is unlawful for a landlord to use, or threaten to use, force, willful threats, or menacing conduct, which would create apprehension of harm in a reasonable person, and interferes with the tenant's quiet enjoyment of the premises in violation of CA Civil Code §1927.

### **Illegal Lock-Outs/Utility Cut-Offs [CA Civil Code §789.3]**

A landlord may not attempt to remove a tenant from the premises unless it is done in accordance with the law. It is illegal for a landlord to do any of the following with the intent to terminate the occupancy:

- ✓ Terminate a utility service (water, heat, light, electricity, gas, telephone, elevator, refrigeration, etc.).
- ✓ Prevent the tenant from gaining access to the property by changing locks or using a deadbolt or similar device.
- ✓ Remove outside windows or doors.
- ✓ Remove the personal belongings or furniture or any other items without prior written consent of the tenant or without a sheriff's execution of a judgment for possession of the premises.

The landlord cannot physically remove a tenant from the property. The landlord must give the tenant proper notice to terminate the tenancy as discussed below. If the tenant does not voluntarily vacate, the landlord must file a lawsuit called an Unlawful Detainer in order to have the tenant removed from the property. If the landlord wins the lawsuit, the landlord will be granted a "Writ of Possession". The Sheriff's Department will serve the tenant with a "Notice to Vacate". If the tenant has not moved within the time allowed (five days), the sheriff's deputies will physically evict the tenant. If a landlord attempts to remove a tenant from the premises by illegal means, a tenant may do one of the following:

Call the police or district attorney. These landlord acts are crimes [Penal Code §418], [Code of Civil Procedure §1159] - Forcible Entry; [Penal Code §594] - Malicious Mischief; [Penal Code §602] - Unauthorized Entry. Initiate a civil action for the landlord's violation of CA Civil Code §789.3 in Superior Court or through a private attorney. If the tenant wins a civil action, he/she can be awarded injunctive relief and/or up to \$100 per day for each day the violation occurs, with a minimum award of \$250, attorney fees, and any actual damages the tenant may have sustained because of the violation. If the tenant is not interested in injunctive relief (i.e. being allowed back into the dwelling), he/she can sue in Small Claims Court for monetary damages only.

### **Implied Warranty Of Habitability [CA Civil Code §1941.1]**

Under state and local housing codes, the landlord is required to maintain the rental units in a habitable (livable, tenantable) condition. This is the "implied warranty of habitability" [*Green vs. Superior Court* (1974), 10 Cal. 3d 616; Civil Code §1941]. This warranty means the law assumes that a landlord must keep the premises in habitable condition, and if he/she does not, the rental agreement may be considered canceled and the tenant may owe only the "reasonable rental value" of the premises in its defective condition. Tenants also have obligations to keep the premises clean and not destroy the property. Unless the landlord and tenant agree on the "reasonable rental value," it is up to the court to decide what the reasonable rental value is.

**NOTE: Non-Waiver of Rights to a Habitable Dwelling [CA Civil Code §1942.1]**

The tenant cannot waive their right to a habitable dwelling unless the landlord and tenant have agreed that the tenant shall undertake to improve, repair or maintain all or designated portions of the dwelling as part of the consideration for rental.

**Landlord Entry [CA Civil Code §1954]**

A tenant has a basic right of privacy that a landlord must respect. Unless it is an emergency, a landlord must give a tenant reasonable notice **in writing** of his/her intent to enter and may enter only during normal business hours. This notice must state the date of entry, approximate time, and purpose of the entry. Twenty-four hours' notice is presumed reasonable notice. **The owner may mail the notice to the tenant. In this case, six days prior to entry is presumed reasonable notice.** Upon entering a dwelling unit, the landlord or agent must leave written evidence of the entry inside the unit. A landlord may enter the residence **after written notice** only in the following situations:

- ✓ To make necessary or agreed-upon repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors. In case of entry by purchasers, the notice may be given orally, in person or by telephone, if the landlord or his or her agent has notified the tenant in writing within 120 days of the oral notice that the property is for sale and that the landlord or agent may contact the tenant orally for the purpose described above. Twenty four (24) hours' notice under this provision would be presumed reasonable.
- ✓ For smoke detector inspection. [CA Health and Safety Code §13113.7].
- ✓ For carbon monoxide inspection. [CA Health and Safety Code §§ 17926 & 17926.1]
- ✓ To inspect water-filled furniture. [CA Civil Code §1940.5].
- ✓ As a result of a court order.
- ✓ A landlord may enter in the following situations without written notice of entry:
  - To respond to an emergency.
  - If the tenant is present and consents to the entry at the time of entry.
  - After the tenant has abandoned or surrendered the unit.
  - A tenant and landlord can agree orally to an entry to make agreed repairs or supply agreed services. The agreement shall include the date and approximate time of the entry, which shall be within one week of the agreement. Where the tenant and landlord agree orally, no written notice required. The landlord may enter for purpose of making an inspection if connected to an improvement, repair, decoration, or some other service that the resident agreed to.

A tenant cannot prohibit a landlord from entering a rental because the tenant is not present or because the time is inconvenient for the tenant. If a tenant is unreasonable about allowing entry for reasons named above (other than an emergency), it may result in the landlord serving a 30-day or a 60-day or a 3 Day Perform or Quit notice to terminate the tenancy. If a landlord violates a tenant's right to privacy, the tenant may call the police to document the violation in a police report. A copy of the police report should be kept. It can serve as evidence if the tenant chooses to take the landlord to court for trespass.

Sacramento County and surrounding incorporated cities have enacted rental inspection ordinances, which may require random inspections of units to be certain they are being properly maintained by the property owner. Tenants are encouraged to be cooperative after receiving proper written notice as described above and continue to notify the management/owner of any needed repairs or problems within their unit.

**NOTE: Any provision of a lease or rental agreement of a dwelling by which the lessee agrees to modify or waive their basic right of privacy, as described above in CA Civil Code 1954, shall be void and contrary to public policy.**

**Lodgers, [Civil Code §1946.5]**

A lodger is defined as a person who has an agreement with the owner of a house to rent a room or room and board within the house occupied by the owner. The owner retains a right to go into all areas of the house or apartment, and has overall control of the house or apartment.

Either party can terminate this type of housing arrangement with notice. The notice should be given at least as many days ahead of the date to vacate as the term of the tenancy. For example, if the lodger pays rent every two weeks, then the notice period should not be less than two weeks, unless a different term is specified in the rental agreement. If a different term is specified in the rental agreement, that term cannot be less than seven days [Civil Code §1946]. Notice must be given as outlined in the section on "Method of Delivery". After the notice term has

expired, the lodger must vacate the property. Any right of the lodger to remain on the property is "terminated by operation of law". If the lodger remains on the property, the lodger may be considered a trespasser, and removed by the police or sheriff. [Civil Code §1946.5, Penal Code §602 (o)]. Confusion often arises as to whether a renter is a tenant or a lodger.

It is strongly recommended that the Owner/Lodger relationship be specified in a written Lodger Agreement that contains all terms of the relationship, including the following specific provisions:

- ✓ That the owner retains access and control over the entire dwelling, including the lodger's living space.
- ✓ That the owner is responsible for the care, cleaning, and upkeep of the entire dwelling, including the lodger's living space.
- ✓ That if the lodger has a key to the room rented, that the owner retains a key as well.
- ✓ That the agreement specifies that the lodger is not considered a tenant under the law, and may be evicted summarily by the owner without a court hearing following expiration of a notice terminating the hiring.

If a law enforcement officer has any doubts as to a renter's status, they will likely refrain from evicting the individual and will advise the owner to pursue the matter through the normal unlawful detainer process.

Please note that if an owner is evicting a lodger "for cause," such as failure to pay rent, the owner may not use self-help and must file an unlawful detainer lawsuit to evict the lodger. If there is more than one lodger, then the landlord cannot evict any of the lodgers without following the unlawful detainer court process.

### **Political Signs**

**As of January 1, 2012, tenants are allowed to post political signs in the window or on the door of the premises leased by the tenant in a multifamily dwelling, or in the yard, window, door, balcony, or outside wall of the premises leased of a single family dwelling. A landlord may prohibit a tenant from posting or displaying political signs in the following circumstances: (1) the political sign is more than six square feet in size; (2) the posting or displaying would violate a local law, state, or federal law; (3) the posting or displaying would violate a lawful provision in a common interest development (HOA's CC&Rs). If no local ordinance exists the landlord may establish a reasonable time period which shall begin at least 90 days prior to the date of the election or vote to which the sign relates and end at least 15 days following the date of the election or vote.**

### **Residential Hotels [CA Civil Code §§1940, 1940.1]**

Under CA Law, a resident of a motel, hotel, residence club, or other lodging facility, after the first 30 days of residency and payment of all charges owed, usually becomes a tenant. No person may require an occupant of a residential hotel, as defined in Section 50519 of the Health and Safety Code, to move, or to check out and reregister, before the expiration of 30 days occupancy if a purpose is to have that occupant maintain transient occupancy status. If a tenancy is created, the proper procedures must be followed in order to terminate the tenancy, as outlined in this handbook. If either of the following criteria apply, the renter is not a tenant but a guest:

- ✓ The residence in a motel, hotel, residence club, or other lodging facility is for less than 30 days or without full payment for the first 30 days, and the county's transient occupancy tax has been paid; or
- ✓ The residence is accessible to the manager, and all of the following services are provided;
- ✓ Fireproof safe for resident's use;
- ✓ Central phone service;
- ✓ Central dining rooms, maid service, mail and recreational services, and
- ✓ Occupancy for less than seven days is allowed.

If the resident is a guest and not a tenant, the resident is in trespass if they remain on the property after the term of hiring has expired. All residential hotels shall provide each residential unit with a locking mail receptacle, acceptable for mail delivery by the United States Postal Service. The law also provides that failure to provide an adequate locking mail receptacle is a basis for considering a residential unit un-tenantable.

[CA Civil Code 1941.1].

### **Quiet Possession [CA Civil Code §1927]**

When a landlord rents a unit to a tenant(s), the landlord is responsible for ensuring that no one else can claim access to that unit. This maintains the quiet possession of the unit by the tenant.

### **Quiet Enjoyment**

When a landlord rents a unit to a tenant(s), the landlord has an obligation to protect the tenant(s) peaceful possession of the premises. This is called the implied covenant (promise) of quiet enjoyment. Thus, a landlord may be in breach of the covenant if he or she does not take reasonable measures to address or remedy substantial annoyances which may occur on the rental property whether caused by tenant(s) or their guests. A tenant who believes that their right to quiet enjoyment has been violated should notify the landlord in writing of the disturbances and allow a reasonable time for the landlord to take corrective action. If the landlord fails to enforce their rights to peacefully enjoy the property then the tenant(s) has the option to sue for breach of the covenant of quiet enjoyment. Some California courts require that the tenant(s) move before suing, while other courts allow the tenant(s) to remain in possession while the lawsuit is pending. If the tenant wishes to file a lawsuit they may seek information and assistance from the Small Claims Court or seek advice from an attorney.

### **Roommates**

There are different types of roommate situations:

- ✓ **Single Contract.** Where there is a single contract for all roommates with the landlord, each roommate is liable for the entire rent regardless of the arrangement among the roommates themselves. This means that if one roommate cannot pay the rent, the other roommate(s) must pay the delinquent roommate's rent or face possible eviction.
- ✓ **Separate Contracts.** Where the roommates have separate contracts with the landlord, each roommate is bound by the terms of his/her individual agreement with the landlord.
- ✓ **Oral Contract for Additional Roommate.** Where an original tenant takes a roommate with the permission of the landlord, and the roommate is not listed on the rental agreement/lease, the original tenant continues to bear the responsibility to the landlord for the rental agreement/lease obligations and also for any damages caused by the roommate.

Suggestions:

- ✓ **When a Roommate Leaves.** If one of the roommates leaves, the landlord should screen a replacement tenant in the same manner that any applicant would be screened. The landlord may wish to have a new rental agreement signed so that all of the residents are current on the contract or he may add an addendum stating this information and attach it to the agreement/lease.
- ✓ **Deposit Issues.** A common problem occurs when a departing tenant requests their share of the security deposit. The landlord is entitled to hold the full security deposit until all parties vacate the rental unit and until this occurs the deposit remains with the rental unit. If the departing tenant is requesting their security deposit portion back then this should be resolved between the roommates. A reasonable solution might be for the remaining tenants to pay the exiting tenant their share unless there are damages caused by the exiting roommate which will be eventually charge to the remaining tenants by the landlord. If they cannot resolve the issue and after the unit is vacated the exiting tenant has the option of Small Claims Court for his/her portion of the deposit. If there is a replacement tenant moving in then another resolution might be for the new roommate to pay the departing tenant whatever their security deposit portion was. However, the incoming tenant should go through a check list with the existing tenant(s) about actual conditions of the unit prior to moving in to avoid the risk of being charged for pre-existing conditions. Tenants often come to the landlord for help in evicting a roommate, but it is best for the landlord not to interfere unless their behavior is in violation of the terms of the rental agreement which could result in the landlord having no alternative except to evict all of the tenants residing in the unit.

**NOTE:** Even if the roommates do not sign a lease or rental agreement with the landlord, they are still probably entitled to the protection of California tenant-landlord laws, including proper notice and eviction procedures.

### **Towing [CA Vehicle Code 22658]**

The owner/person in lawful possession of any private property, within one hour of notifying, by telephone or by the most expeditious means available, the local traffic law enforcement agency, may cause the removal of a vehicle parked on the property to the nearest public garage under any of the following circumstances.

- ✓ Signs are posted in plain view at all entrances to the property. Signs posted on the property must list the name and telephone number of each towing company who has a written contract with the property owner for this service. The size of the sign cannot be less than 17 inches by 22 inches, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense and contain the telephone number of the local traffic law enforcement agency as well as the towing company information. The sign may also indicate that a citation may also be issued for the violation.
- ✓ The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.

- ✓ The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield or any other major part or equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the local traffic law enforcement agency, and 24 hours have elapsed since that notification.

A person providing the written authorization for the tow does not have to be physically present at the location where the vehicle is to be removed. The owner or the manager only needs to be at their unit and available to sign the tow authorization for the driver. In smaller properties (15 or fewer units) where there is no on-site manager or designated agent a tenant may request the tow, but the following steps must be taken:

- ✓ The tenant must request the tow from the tenant's own assigned parking space and must verify the violation; and
- ✓ The tenant must, within 24 hours, provide a signed request or electronic mail, or must have called and will provide a signed request or electronic mail to the property owner or owner's agent; and
- ✓ The owner or owner's agent must provide the tenant's signed request to the towing company within 48 hours of authorizing the tow; and
- ✓ The signed request or electronic mail must contain the name and address of the tenant, and the date and time the tenant requested the tow.

The owner of a vehicle removed from private property may recover for any damage to the vehicle resulting from any intentional or negligent act of any person causing the removal of, or removing, the vehicle.

### **Utility Service Cut Off for Owner's Non-payment of Utilities [CA Civil Code §1942.2] [PUC §777]**

Effective January 1, 2010 where a landlord-tenant relationship exists, if an electrical, gas, heat, or water corporation furnishes individually metered residential service to residential occupants in a detached single-family dwelling, multiunit residential structure, mobile home park, or permanent residential structure in a labor camp, and the owner, manager, or operator is the customer of record, the corporation is required to make every good faith effort to inform the residential occupants, by means of a specified written notice, when the account is in arrears, that service will be terminated at least 10 days prior to termination. Residential occupants may become customers of the corporation, providing that one or more of the residential occupants are willing and able to assume responsibility for the subsequent charges to the account to the satisfaction of the corporation then the corporation must make this service available to the residential occupants. The utility corporation shall further inform the residential occupants that they have the right to become customers, to whom the service will then be billed, without being required to any amount which may be due on the delinquent account. A tenant who has made a payment to a utility, when the utility costs were included in the rent as provided in the rental agreement between the resident and the property owner/management, then the tenant may deduct the payment from the rent.

## **RENTAL AGREEMENTS**

### **Lease**

A lease **must** be in writing if for a term longer than one year. [CA Civil Code §1624].

All parties are assured that the contract will last for a specific period of time unless a party violates a promise of the lease agreement. The tenant and landlord are bound by the terms spelled out in the lease unless both agree in writing to a change and there is proper notice. The landlord may not change any of the terms of tenancy unless the lease agreement so provides.

If the tenant breaks the terms of the lease agreement, the landlord can ask the tenant to remedy the problem within three days or vacate. The tenant may be liable for rent for the entire term of the lease agreement even if evicted for failure to comply with the lease agreement.

If the tenant vacates early, the tenant is responsible for the rent for the entire lease period unless and until the property is re-rented. If the landlord re-rents the unit before the end of the lease period, the landlord may not collect "double rent". The tenant is liable for only the "gap period" between his moving out and the money received by the landlord from the new tenant moving in.

In addition, the landlord has a duty to make a good effort to re-rent the property. This is called the duty to "mitigate damages" in contract law. [CA Civil Code §1951.2].

Landlords must also comply with the lease agreement. If a landlord fails to comply and, for example, attempts to change the terms of the contract mid-lease, then that landlord may be liable for a breach of contract. If the landlord forces the tenant to move out early when the tenant has not committed a breach the tenant may be entitled to moving costs.

**Copy of Rental Agreement:** The owner shall also provide a copy of the fully executed rental agreement, signed by all parties to the tenant within fifteen days of the execution of the agreement (and once each year within fifteen days of a request by the tenant). [CA Civil Code §1962 et seq.]

**Month to Month Rental Agreement**

A rental agreement for a period of less than 12 months can be written or oral. However, a rental agreement of any length should be written and signed for the protection of the landlord and the tenant. In order to terminate or change the terms of a month-to-month agreement a proper notice is required.

The tenant may vacate the property after giving the landlord a written 30-Day Notice of intent to leave. Rent should be paid for these 30 days.

If the landlord wishes to terminate the tenancy without cause, they must give either a 60-day written notice if the tenant has resided in the property for 12 months or longer or a 30-day written notice if the tenant has resided in the property for less than 12 months. [CA Civil Code §1946.1]. The landlord need not give a reason for these notices. Housing Choice Voucher tenants (Section 8) are entitled to a written 90-Day Notice for no cause termination. [CA Civil Code § 1954.535].

The landlord may give a 3-Day Pay or Quit, a 3-Day Perform or Quit or a 3-Day Quit notice where applicable. Other terms of the rental agreement can be changed by the landlord upon proper written notice, generally no less than 30 days.

There are two standard types of agreements: the month-to-month tenancy and the fixed term lease for a specified period of time (such as 3-months, 6-months or 12-month terms).

**Lease Negotiation in a Foreign Language [CA Civil Code §1632]**

As of January 1, 2004, a landlord or a manager who negotiates in Spanish, Chinese, Tagalog, Vietnamese or Korean languages is required to provide a copy of the lease and related documents (which would include house rules, notices, etc.) in that particular language. This law does not apply if negotiations are done in English and the applicant has an interpreter, which must be provided by the applicant and be of at least 18 years of age.

**Prohibited Provisions [CA Civil Code §1953]**

Any lease or rental agreement entered into after January 1, 1976 cannot ask the tenants to give up the following rights:

Rights regarding security deposits.

- ✓ Rights regarding landlord entry.
- ✓ Right to assert a legal cause of action in the future.
- ✓ Right to notice or hearing as required by law.
- ✓ Procedural rights in any litigation involving tenancy.
- ✓ Right to have landlord exercise a duty of care to prevent personal injury or personal property damage where that duty is imposed by law.

If a provision of the lease asks the tenant to give up any of the above rights, that provision (and only that provision) of the lease shall be void as contrary to public policy.

**Registered Sex Offenders – Real Property Disclosure (Required Language) - [CA Civil Code §2079.10A]**

Megan's Law has been a source of confusion for many in the housing industry. As described below, information regarding the existence of the Megan's Law sex offender registry must be provided in connection with a written agreement for sale or rental of residential property, but that information may not be used to discriminate against or deny housing for a registrant. The term 'person at risk' is not defined in the Megan's Law statute, and has been interpreted very narrowly by the California Attorney General.

Written agreements and contracts for the sale or rental of residential real property entered into on or after April 1, 2006 and any contract for sale of real property (as defined in CA Civil Code §2985), where one to four dwelling units is being sold or rented, must contain the following:

***Pursuant to Section 290.46 of the CA 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](http://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.***

**Written agreements and contracts for the sale or rental of residential real property entered into on or after July 1, 1999 and before April 1, 2006, may contain the information about CA Department of Justice's Sex Offender Identification Line, which is a "900" telephone service.** Any person who uses information disclosed on this web site to commit a misdemeanor is, in addition to any other punishment for that misdemeanor, subject to a fine of not less than \$10,000. Any person who uses information disclosed on this web site to commit a felony shall, in addition to any other punishment for that felony, be punished by a 5-year term of imprisonment in the state prison. [CA Penal Code, §290.46.sub(j)(l)(2);(k)]

A person is authorized to use information disclosed on this web site only to protect a person at risk. Except to protect a person at risk or as authorized under any other law, use of any information disclosed on this web site for purposes relating to any of the following is prohibited: health insurance; insurance; loans; credit; employment; education; scholarships or fellowships; *housing or accommodations* (Exception: a HUD property prohibits admission of any household member who is subject to a state sex offender lifetime registration requirement); benefits, privileges, or services provided by any business establishment. Use of information on this web site for purposes other than to protect a person at risk or for a prohibited purpose as described, shall make the user liable for the actual damages caused, and any amount that may be determined by a jury or a court, not exceeding three times the amount of actual damages, and not less than \$250, plus attorney's fees, exemplary damages, or a civil penalty not exceeding \$25,000. [CA Penal Code §290.46, sub (L)(1):(2):(4)(A)].

### **Rental Agreement Terms and Policies**

The terms and policies in or attached to the rental agreement, other than the rent and deposit amounts, which can vary between apartments, should be the same for all tenants.

### **Rental Agreement Changes in Terms and Policies**

In a month-to-month residential rental agreement or other periods less than a month, the landlord may give written notice to the tenant, changing the terms of the written or oral agreement. Any change or revisions of community policies/rules/regulations must be applied equally to all tenants. The amount of notice required depends on the term of the rental agreement. For example, a 30-day written notice is required to change the terms of a month-to-month rental agreement and a 7-day written notice is required to change the terms of a week-to-week rental agreement. The parties may agree in writing that a notice in change in terms may be given at any time not less than 7 days before the expiration of the term, to be effective upon the expiration of the term. For example, if both parties have agreed to a 7-day written notice and the month to month agreement ends on the 30<sup>th</sup> of the month, then the written notice must be served by the 23<sup>rd</sup> of the month or earlier, indicating that the change will take effect after the 30<sup>th</sup>.

Written notice of changes in community policies/rules/regulations must be served using one of the following methods:

- ✓ Personal delivery of written notice to a tenant(s) at his or her residence or place of business; or
- ✓ If the tenant(s) is absent from his or her residence or place of business, by leaving a copy of the notice with a person of suitable age and discretion at the residence or place of business AND mailing a copy addressed to the tenant(s) at his or her place of residence; or
- ✓ Posting the notice for each of the tenant(s) in a conspicuous place on the property if there is no person of suitable age or discretion to be found AND mailing a copy to each tenant by first class mail.

## **RENT**

### **Bounced Checks**

An owner, who chooses to demand cash after a check has bounced, must provide a written notice that the check or other form of payment was not accepted and state the time period the tenant must pay in cash. This period can be no longer than three months. A copy of the returned check or other form of payment must be attached to the notice. If the existing rental agreement does not include the language that cash may be required if a check bounces then the owner must give the tenant a 30-Day Notice of Change of Terms. If the tenant is on a lease for longer than 30 days and there is no language that cash may be required if a check bounces in the existing lease, then the change cannot be made until the term of the lease expires.

**Any waiver of the rights provided under this law is contrary to public policy, void, and unenforceable.**

### **Collection of Rent Owed**

If a tenant fails to pay the rent when it becomes due, a landlord may serve the tenant with a 3-Day Pay or Quit Notice that gives the tenant the option of either paying the rent owed or vacating the property within three days. If

the tenant does neither by the end of the third day, the landlord may initiate the eviction process. See Section Six, Termination of Tenancy by the Landlord, Termination for Cause, 3 Day Pay or Quit Notice.

### **Form of Rent Payments [CA Civil Code §1947.3]**

A landlord or a landlord's agent (resident manager) cannot require cash as the only form of payment for rent or security deposit, except where the tenant has paid rent previously with a check written on insufficient funds or placed a stop payment on a check or money order. The owner may require cash as the only form of rent payment for up to three months after receiving a bad check.

### **Late Charges [CA Civil Code §1671]**

There is no legal requirement that the landlord offer a grace period before charging a late fee. However, if the landlord does offer a grace period and the last day to pay a rental obligation before a late fee is assessed falls on a weekend or holiday, CA law extends the last day to pay over to the next business day. [CA Code of Civil Procedure §12, §12a(a) & §13; CA Civil Code 11; Government Code §6700 et. Seq.]. A late fee may be charged only as compensation for actual loss or a reasonable estimation of the actual loss caused by late payment, such as administrative costs of the late payment and loss of interest on the rent. If a tenant feels that a late charge is excessive, the tenant can ask the landlord to justify it or lower it. If the landlord refuses, the tenant can sue the landlord and ask the court to void the clause of the contract involving late fees, and to return any late fees previously paid. In California a late charge of more than 6% may be considered excessive by some courts.

**NOTE:** Enforcement of late fees must be applied equally to all tenants and not selectively enforced on only certain tenants.

### **Rent Control**

There is no rent control in Sacramento County. Therefore, a landlord may raise the rent as much and as often as desired in a month-to-month tenancy with proper notice.

### **Rent Increases [CA Civil Code §827]**

Under a month-to-month agreement, a 30-day written notice is required before the rent can be raised; if the increase results in more than a 10 percent increase over the previous 12 month period, a 60-day written notice is required. If renting on a weekly basis, a seven-day written notice is required. In areas without rent control, including Sacramento County, there is no limit to the amount a landlord can charge for rent nor is there a restriction on how often the rent can be increased in a month-to-month tenancy. A landlord may not impose a rent increase or other changes in terms as a means of retaliating or discriminating against a tenant. [CA Civil Code §1942.5].

Written notice of a rent increase must be served using one of the following methods:

- ✓ Personal delivery to a tenant; or
- ✓ Mailing a copy of the notice to the tenant. If the notice is mailed, then five days is added to the notice period. For example, if the rent increase requires 30 days written notice and the notice is mailed, the increase does not take effect until 35 days after the date of mailing.

### **Written Receipts [CA Civil Code §1499]**

A debtor has a right to require from his creditor a written receipt for any property delivered in the performance of his obligation. In other words, the tenant has the right to require from the landlord a written receipt for rents paid.

## **REPAIRS**

### **Options For Repairs That Do Not Fall Under Landlord's Minimum Obligations**

Generally, items such as minor repairs not affecting health and safety issues, appliances, security systems, luxury or cosmetic items will not be covered by the implied warranty of habitability. For those items the tenant does not have the same option of "withholding rent" or "repairing and deducting" or "moving" or "calling local authorities". However, if the landlord provides a stove or other appliance, the landlord still may have an obligation to provide them in working condition or repair them. If the tenant has given the landlord reasonable notice and the landlord refuses to repair these items, the tenant may consider consulting a private attorney or contacting the Small Claims Advisory Clinic for general information in filing a small claims action.

### **Tenant's Request For Required Repairs**

Tenants should take the following steps when requesting that the landlord make repairs:

- ✓ Give written notice to the landlord about the needed repairs, making sure the landlord knows exactly what is wrong. Keep a copy of all written requests for your files.
- ✓ Report immediately any type of water damage to the rental. For example, if there is a plumbing leak, a toilet over flow, a dishwasher over flow etc.
- ✓ Wait a reasonable amount of time for the repairs to be made. The law says that 30 days is "presumed" reasonable; however, a reasonable wait may depend on the circumstances. If a tenant waits fewer than 30 days and the case goes to court, he/she must prove the shorter wait was reasonable. For example, if there is no heat in the middle of a very cold month, a court may find a shorter time reasonable.
- ✓ Cooperate with the landlord in his/her attempts to make repairs. Unless it is an emergency, the landlord is required to give a tenant "reasonable written notice" of his/her intent to enter the premises to make repairs. Reasonable notice is presumed to be 24 hours in most cases.

### **Tenant's Remedies For Landlord's Failure To Make Required Repairs**

If a landlord has been properly notified and given a reasonable amount of time to make a repair and refuses then the tenant may wish to use one of the options listed below. **It is important for the tenant to remember that in order to exercise any of the following options that the requested repair(s) must be affecting the tenant's safety and health and the requested repairs are substantially in breach of the implied warranty of habitability. [CA Civil Code §1941.1].**

- ✓ Repair and Deduct - If the landlord fails to make repairs within a reasonable time after being notified by the tenant, and the cost of repairs does not exceed one month's rent, the tenant may have the repairs made and deduct the cost from the rent when it becomes due. This remedy cannot be used more than twice in a 12-months period. [CA Civil Code §1942]. Before making repairs the tenant should:
  - Give the landlord a notice of the habitability/repair problems, preferably in writing.
  - Wait a reasonable amount of time for the repairs to be made (except in the case of an emergency, reasonable is presumed to be 30 days in most circumstances).
  - Notify the landlord (preferably in writing) that the repairs will be done.
  - After the repairs have been made, provide written evidence of the cost to the landlord, and ask the landlord for reimbursement.
- ✓ Withhold Rent - In rare situations severe violations of Health & Safety Codes may justify withholding rent under the law. [*Green vs. Superior Court (1974), 10 Cal.3d 616*].

**Caution: Anytime a tenant withholds some or all of the rent, the tenant is at risk of receiving a 3-day pay or quit notice or a notice of termination. If the tenant does not comply with either notice then the landlord may begin the eviction process. A tenant may have to defend their actions in court, and risk having an eviction reflected in their rental history and a judgment in their credit history. A tenant should seek legal advice prior to withholding rent.**

- ✓ Call the Local Authorities for Habitability and Building Defect Inspections - A tenant may report habitability/repair issues to their local code enforcement agency. If an agency is called, *and an inspector comes to the property*, the tenant should request and save a copy of the report and the inspector's business card. Try to obtain a certified copy of the report, as some courts only accept certified copies into evidence.
- ✓ Pay for repairs - If the landlord fails to make repairs within a reasonable time after being notified by the tenant, the tenant has the option of making the repairs him/herself (or hiring someone to make the repairs) and then suing the landlord for the cost of making the repairs. A tenant may contact an attorney or contact the Small Claims Advisory Clinic (916) 875-7846.

**NOTE: If a tenant takes any of the above actions, and is served with a 30-Day Notice to vacate within 180 days of the action, the notice may be considered "retaliatory" and may be illegal, see CA Civil Code §1942.5.**

- ✓ Move (CA Civil Code §1942) - If the landlord fails to make required repairs within a reasonable time after being notified by the tenant, the tenant may vacate the premises. The tenant may also exercise this option if landlord fails to make repairs required by proper authorities. In either situation if the tenant vacates the unit the landlord may attempt to recover rent owed pursuant to a rental agreement or lease in which case the tenant may have to prove their reasons for vacating to the court.

### **The Role Of Code Enforcement**

Code Enforcement is the division of local government responsible for enforcing the state housing code. Code Enforcement only has jurisdiction over those violations that fall under a tenant or landlord's minimum obligations to maintain a habitable dwelling, as described above. Some of the more common complaints over which Code Enforcement has jurisdiction include:

- ✓ Lack of required utilities such as gas, electricity or water
- ✓ Surfacing sewage or plumbing leaks
- ✓ Unsafe electrical wiring
- ✓ Inadequate heating
- ✓ Roof leaks and other structural problems
- ✓ Interior infestations of rodents, cockroaches, or other disease carrying pests
- ✓ Deteriorated or ineffective waterproofing of exterior walls, roof, foundations or floors, broken windows or doors
- ✓ Dangerous electrical, mechanical, fire or plumbing hazards

Prior to contacting Code Enforcement, a tenant should notify the landlord and allow a reasonable amount of time for the repairs to be completed. Upon receiving a complaint from a tenant, Code Enforcement will generally contact the landlord and notify them of the complaint. Depending on the seriousness of the complaint, Code Enforcement may schedule an inspection immediately or may give the landlord a period of time to complete the repairs before the inspection. Once an inspection is conducted, the landlord will be given an opportunity to correct any violations. The landlord may be subject to fines and penalties if such corrections are not timely made. These fines and penalties vary by jurisdiction.

**Relocation Ordinance:** If the code enforcement agency determines that the property is uninhabitable the tenant may be forced to move with little or no notice. In this situation the tenant may be eligible for relocation benefits. The local jurisdiction may have a '**Relocation Ordinance**' which may provide the tenant the cost of moving and other monetary considerations if the property has been condemned by Code. If condemnation has occurred the tenant should ask code enforcement for this information.

### **RETALIATION [CA Civil Code §1942.5]**

Occasionally a landlord may attempt to evict a tenant with a three-day, or thirty-day, or sixty-day Notice to vacate because a tenant has taken lawful action to get repairs done. This is called "retaliatory eviction" and is illegal. Retaliatory rent increases may also be illegal.

If a tenant **does not owe** any rent and has done **any** of the following:

- ✓ Made a complaint to the landlord about an uninhabitable condition.
- ✓ Made a complaint to a governmental agency with the landlord's knowledge.
- ✓ Given notice requesting repairs or stating an intention to use the repair and deduct/withhold rent.
- ✓ Joined a tenant's association.
- ✓ Filed a lawsuit against the landlord involving the issue of habitability, or
- ✓ Exercised any legal rights involving the landlord, then

A landlord cannot threaten or actually decrease services, unreasonably raise the rent, or force a tenant to involuntarily leave within 180 days of the lawful action, if the landlord's intent is to punish a tenant for exercising his/her rights under the law. The 180-day protection period can only be used once in any twelve-month period. If a tenant feels he/she has been treated unfairly after 180 days, he/she should seek legal advice. In some cases, protection can be extended through legal action. In most cases where the landlord has retaliated, a tenant has the option to sue the landlord for his/her retaliatory actions. A tenant can hire an attorney or go to Small Claims Court. If the tenant wins, the landlord could be liable for actual damages (reasonable attorney's fees and costs, moving costs, etc.). If the landlord's actions are deemed to be fraud, oppressive or malicious, the judge may award the tenant punitive damages of up to \$2,000 for each retaliatory act. Be advised that not all retaliatory acts cause harm to a tenant that will support a claim for damages. A tenant should contact an attorney or the Small Claims Advisor regarding their particular situation.

Illegal retaliation can also be a defense to an unlawful detainer eviction. A tenant will need to show the court documentation or other proof of the action he/she took that caused the landlord to retaliate. The claim of retaliatory eviction as a defense to an unlawful detainer matter will not be effective if the tenant is currently in default of paying the rent. If a tenant is evicted through what they believe is a retaliatory action, they may still have the option of filing a lawsuit for damages pursuant to CA Civil Code §1942.5.

## **SECTION FOUR** **The End of the Tenancy**

### **DEATH OF A TENANT [ CA Civil §1934]**

A month to month tenancy terminates upon notice of the death. The termination is effective 30 days after the last rent payment. The landlord should notify the police, sheriff, county coroner and the emergency contact for the tenant of the tenant's death. If there is a lease, the death would be treated like any other pre-mature lease termination. The estate would be liable for rent during the lease term, but the landlord must try to re-rent the unit as soon as possible.

### **Possession and Disposition of Property Where Coroner is Involved [CA Government Code 27491.3].**

In any death into which the coroner is to inquire, the coroner may take charge of any and all personal effects, valuables, and property of the deceased at the scene of death or related to the inquiry and hold or safeguard them until lawful disposition thereof can be made. The coroner may lock the premises and apply a seal to the door or doors prohibiting entrance to the premises, pending arrival of a legally authorized representative of the deceased. Any costs arising from the premises being locked or sealed while occupied by property of the deceased may be a proper and legal charge against the estate of the deceased.

Any property or evidence related to the investigation or prosecution of any known or suspected criminal death may, with knowledge of the coroner, be delivered to a law enforcement agency or district attorney, receipt for which shall be acknowledged.

Any person who searches for or removes any papers, moneys, valuable property or weapons constituting the estate of the deceased from the person of the deceased or from the premises, prior to arrival of the coroner or without the permission of the coroner, is guilty of a misdemeanor.

### **Possession and Disposition of Property Where Coroner is Not Involved**

The landlord should not release any of the tenant's possessions to an unknown third party.

The landlord should require relatives or other person to present proof that they have been court appointed to take the tenant's possessions. The exception would be if the value does not exceed a level set by the local court then the possessions could be released to the appropriate person.

If the relatives or other person cannot present proof that they are authorized to take the tenant's possessions, the landlord should contact the County Public Administrator for proper procedures to follow disposition of the tenant's possessions.

## **FORECLOSURE**

### **Bank's Notice to Tenant Prior to Foreclosure Sale [Civil Code § 2924.8]**

A bank must mail a notice to any tenant(s) who live at the property upon posting a notice of sale. The notice must be in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. This notice must notify the tenant that the foreclosure process has begun, which may affect their right to live there. Twenty days or more after the date of the notice the property may be sold at foreclosure.

### **Bank's Notice to Homeowner [Civil Code §2924(a)]**

A Notice of Default is the first step in the foreclosure process and serves to formally notify the homeowner that they are in default of their loan. By law, the homeowner has three months from the date the notice is filed with the recorder's office to cure the default.

### **Property Owner's Disclosure**

The law requires a specific disclosure be given by a new property owner to tenants of their rights when the property owner intends to terminate a tenancy after a foreclosure action. Also the law allows an unlawful detainer lawsuit to be "masked" by the court permanently if the building was involved in a foreclosure and the unlawful detainer action against the tenant is never taken to a final judgment.

### **Tenant's Duty to Pay Rent [Code of Civil Procedure §1161(2)]**

During this time, the homeowner still holds title to the property and is therefore entitled to continue to collect rent from any tenants in possession of the property. Failure to pay the rent could lead to the homeowner filing an unlawful detainer action, also known as an eviction, against the tenant. If the tenant does not pay rent, Civil Code 1950.5 allows the landlord to deduct the rent and other legal charges from the security deposit.

### **Termination of Tenancy by Homeowner in Default [Civil Code §1946.1]**

So long as the homeowner has title, he or she may also terminate a month-to-month tenancy without cause and with proper written notice of 30 days to tenants of less than one year, 60 days to tenants of one year or more, and 90 days to tenants participating in the Housing Choice Voucher Program (Section 8). The homeowner generally may not terminate a fixed-term lease without cause.

### **Termination of Tenancy by Bank or New Owner After Foreclosure [Code of Civil Procedure §1161a(c)]**

Effective January 1, 2011 California law requires a bank or property owner to provide a tenant a specific written notice regarding the tenant's rights after foreclosure when the bank or new owner wishes for the tenant to move out of the unit.

The specific language must be included if all of the following are true:

- ✓ The entity or person serving the notice is the successor in interest to the owner of the foreclosed-upon property (i.e., whoever took the property at the foreclosure sale: the bank or a new owner)
- ✓ The tenant in question was a tenant at the time of foreclosure.

The specific language is NOT required if either of the following is true:

- ✓ The tenancy is terminated under Code of Civil Procedure Section 1161 (3-day notice or it is an automatic termination of the lease at the end of the term).
- ✓ The new owner and the tenant have entered into a new written rental/lease agreement or a written acknowledgement of the pre-existing lease.

The specific language MUST state the following: "You should talk to a lawyer NOW to see what your rights are. You may receive court papers in a few days. If your name is on the papers, it may hurt your credit if you do not respond and simply move out. Also, if you do not respond within five days of receiving the papers, even if you are not named in the papers, you will likely lose any rights you may have. In some cases, you can respond without harming your credit. You should ask a lawyer about it."

### **Additional Information Regarding "Protecting Tenants in Foreclosure Act" after May 20, 2009**

If the owner of residential property has been foreclosed upon, and the new owner wants the tenants in possession to move, the new landlord must give a written "Notice of Termination of Tenancy" of at least 90 days if the agreement with the previous owner was a month-to-month agreement. Under Federal law, if the tenant entered into a lease with the previous owner prior to the notice of foreclosure (Notice of Sale), the immediate owner after foreclosure must allow the tenant to stay until the end of the lease term. However, the immediate owner after foreclosure may terminate the tenant's lease with 90 day notice if the owner subsequently sells the home to a purchaser who will occupy it as a primary residence. The law applies only to a bona fide lease or tenancy. In order for a lease or tenancy to be considered bona fide: (1) The tenant cannot be the prior owner or child, spouse or parent of the prior owner; (2) The lease or tenancy must be a result of an arms-length transaction, (i.e. not one conducted with a relative or business partner); (3) The rent must not be substantially less than fair market value, unless the unit is subsidized (i.e. such as Housing Choice Voucher – Section 8). Under Federal law, if the immediate owner after foreclosure will occupy the unit as a primary residence, the owner may terminate a Section 8 lease with a 90 day notice to the tenant. Other laws may prohibit an eviction in this circumstance or provide the tenant with a longer notice before eviction. The tenant may wish to consult a lawyer or local legal aid or housing counseling agency to discuss any rights they may have.

If the previous homeowner is residing in the foreclosed home, the law only entitles the homeowner three days to vacate the premises. **Security Deposit After Foreclosure – please refer to page 48**

### **FIXED TERM LEASE AND BREACH OF LEASE**

Unless there is an agreement to the contrary in the original lease, a tenant may move out when the lease expires without having to give an additional 30-Day Notice. To be courteous, however, a tenant may give a written notice of his/her intent to move 30 days prior to the expiration of the lease. Unless there is an agreement to the contrary in the original lease, a landlord is not required to give a 30-Day Notice of his intent to not renew the lease. Therefore, it is advisable for a tenant to request a renewal of the lease 30 days prior to the expiration of the old lease. Obtain the lease renewal in writing, signed by the landlord.

**NOTE:** If a tenant remains in the rental after his/her lease has expired and it has not been renewed as a lease, he/she may be considered to be on a month-to-month tenancy. [CA Civil Codes §1946 and 1946.1].

When a tenant moves out prior to the end of the lease term without the landlord's permission the tenant may be in breach of the lease. In some cases the lease may contain a liquidated damages provision which would allow the tenant to breach the lease for a fixed monetary amount. Absent a liquidated damages provision, the tenant may

be liable for the remainder of the lease period, unless the unit is re-rented. The landlord has a duty to mitigate damages by making a good faith effort to re-rent the unit.

### **MILITARY LEASE TERMINATION**

The Federal Service Members' Civil Relief Act allows service members to terminate leases under certain situations. If a tenant:

- ✓ Becomes a service member after entering into a fixed term lease, the service member can terminate the lease by serving a 30-day notice of termination, which can be stamped and mailed to the landlord/management; or
- ✓ If the tenant is in the military at the time of entering into the lease and then receives military orders to be transferred the tenant can terminate the lease with a 30 day notice, which can be stamped and mailed ;or
- ✓ If the tenant receives military orders to be assigned to a different location for at least 90 days, the tenant can also terminate the lease with a 30 day notice, which can be stamped and mailed.

California Military & Veterans Code §406 prohibits evictions if the property is occupied primarily by the service member, or the service member's spouse, children or other dependents during active military service periods and until 30 days after the service member is released from active service or duty unless the court grants leave of court after an application by the landlord.

California Military & Veteran's Code §409 allows the active military member to terminate a lease by giving written notice of terminations to the landlord. If rent is paid monthly the termination would be effective on the last day of the month following the notice and in any case no more than 45 days after the notice is provided to the landlord. In the case of all other leases, termination shall be effected on the last day of the month following the month in which the notice is delivered or mailed and, in that case, any unpaid rent for period preceding termination shall be prorated and any rent paid in advance for a period succeeding termination shall be refunded to the tenant.

Under Federal law a 'service member' is:

- ✓ A member of the Army, Navy, Air Force, Marine corps, or Coast Guard on active duty; or
- ✓ A member of the National Guard under a call to active service authorized by the President or the secretary of defense for a period of more than 30 consecutive days, or
- ✓ A member of the commissioned corps of the Public Health service on active service; or
- ✓ Commissioned members of the National Oceanic and Atmospheric Administration on active service.

Under California law a 'service member' includes National Guard officers and enlisted members called or ordered into active state service by the Governor or into active federal service by the President of the United States, or United States Military Reserve reservists who are called to full-time active duty. Full time active duty for a reservist is more than seven days in any 14-day period.

**A landlord may not impose upon a service member any penalties as a result of the service member breaking the lease, such as demanding payment of a lease termination fee or forcing return of rent concessions.**

### **MONTH TO MONTH RENTAL AGREEMENT [Civil Code §1946]**

Unless there is another agreement, a tenant must give the landlord a 30-day written notice of his/her intent to move. The written notice may be given at any time of the month. The tenant is generally responsible for the rent for the full 30 days, even if the tenant moves out sooner. Rent will be pro-rated for the days included past the first of the month (or the date the agreement begins). The notice must be served pursuant to one of the methods listed in CA Code of Civil Procedure §1162. It is strongly recommended that the written notice be served personally.

### **PERIODIC TENANCIES OTHER THAN MONTH TO MONTH**

In tenancies other than month-to-month, excluding term leases, a tenant shall give notice for at least as long as the term of the periodic tenancy (i.e. rent paid every 2 weeks requires a 14 Day Notice, weekly rentals require a 7 Day Notice etc. [CA Civil Code §1946.1].Lease and Breach of Lease.

### **VICTIMS OF DOMESTIC VIOLENCE [CA Civil Code §§ 1941.5, 1941.6, 1946.7]:**

#### **Changing the Locks:**

As of January 1, 2011, a landlord may be required to replace the locks if requested to do so by a tenant who (a) makes the request in writing; and (b) provides the landlord with a police report or court order stating that the protected tenant or a household member has filed a report alleging that the protected tenant or the household

member is a victim of domestic violence, sexual assault, or stalking. If the landlord fails to change the locks within 24 hours of being requested to do so by the protected tenant, and being given a copy of the police report or court order, the tenant may change the locks without the landlord's permission, regardless of any contrary provision in any lease agreement, however the tenant is required to give the owner a duplicate key. The tenant must ensure that the new locks are installed in workmanlike condition and are of equal or better quality than the previous locks, the landlord is notified within 24 hours and is provided with a key. See CA Civil Code §§1941.5 & 1941.6.

If the restrained person is also a tenant in the same dwelling unit as the protected person, that person remains liable with all other tenants of the dwelling unit, pursuant to the lease. [CA Civil Code §1941.6].

#### **Terminating the Lease:**

A tenant may terminate their lease if they or a member of their household is a victim of domestic violence, sexual assault or stalking by a co-tenant, neighbor in the building, or a non-tenant of the building. [CA Civil Code §1946.7]. The tenant must provide a written notice to the landlord terminating the tenancy and must attach to the notice either of the following:

- ✓ a copy of a temporary restraining order or emergency protective order, lawfully issued within the last 60 days, **but effective January 1, 2012 it has been increased to 180 days**, that protects the tenant or household member from further domestic violence, sexual assault, or stalking; or
- ✓ a copy of a written report, written within the last 60 days, **but effective January 1, 2012 it has been increased to 180 days**, by a peace officer employed by a state or local law enforcement agency acting in his or her official capacity, stating that the tenant or household member has filed a report alleging that he or she or the household member is a victim of domestic violence, sexual assault, or stalking. A household member as used in this section means a member of the tenant's family who lives in the same household as the tenant.

The notice to terminate tenancy must be dated within 60 days (**180 days as of 1/1/12**) of the date the temporary restraining order or emergency protective order was issued, or within 60 days (**180 days as of 1/1/12**) of the date the written police report was made. The tenant is responsible for rent under the lease for 30 days after the notice to terminate tenancy is given, and thereafter is released from any obligation to pay rent under the lease without penalty. If the tenant vacates and the unit is re-rented prior to the end of the 30 days, then the rent shall be prorated. Pursuant to this law, only the tenant who is a victim or whose household member is a victim of domestic violence, sexual assault or stalking is relieved from their obligation to pay rent under the lease. Tenants, who are not members of the same household of the victim, must fulfill their obligations under the rental agreement. A person, who is the perpetrator, and is a tenant and been excluded from the dwelling under this law remains liable under the lease with all other tenants of the dwelling unit for rent as provided in the lease.

The security deposit law did not change. Under existing law, the owner is not obligated to return any portion of the security deposit until the owner regains possession of the unit.

A landlord may terminate or decline to renew a tenancy if one of the following incidents have occurred:

- ✓ The tenant allows the person against whom the protection order has been issued or who was named in the police report of the act or acts of domestic violence to visit the property; or
- ✓ The landlord reasonably believes that the presence of the person against whom the protection order has been issued or who was named in the police report poses a physical threat to other tenants, guests, invitees, or licensees, or to a tenant's right to quiet possession of the property.
- ✓ The landlord must have previously issued a 3-day notice to the tenant to correct the violation before proceeding with an eviction.

### **TERMINATION OF TENANCY BY THE LANDLORD**

#### **Termination Without Cause**

When a tenant has resided in a rental unit for one year or more, he/she is entitled to 60 days' advance written notice if the landlord wishes to terminate that tenancy without cause. A landlord may give 30 days' written notice if the tenant has resided in the dwelling for less than one year. Under certain circumstances, a landlord who has contracted to sell a dwelling unit may give a 30-day written notice regardless of the tenant's length of tenancy. [CA Civil Code §1946.1(d)]. A landlord who wishes to terminate the tenancy of a Section 8 (Housing Choice Voucher) tenant without cause must give a 90-day notice of termination.

The tenant is responsible for rent during the entire notice period. If the tenant does not return possession of the property to the landlord by the end of the notice period then the landlord must file a lawsuit known as an unlawful

detainer in order to evict the tenant. The landlord cannot take any action to force the tenant out. The sheriff is the only party who can remove the tenant(s) from the property. Following are the appropriate notices:

- ✓ **30-Day Notice of Termination** - The landlord must give a written 30-Day Notice of termination to the tenant on a month to month rental agreement if the tenant has lived there less than 12 months. A tenant who wishes to terminate a month to month tenancy must also give a 30-day written notice to the landlord regardless of the length of the tenancy.
- ✓ **60-Day Notice of Termination** - The landlord must give a written 60-Day Notice of termination to the tenant on a month to month rental agreement if the tenant has lived there 12 months or longer.
- ✓ **90-Day Notice of Termination** [CA Civil Code 1954.535] - The landlord must give a written 90-Day Notice of termination to a Section 8 tenant in a month to month rental agreement regardless of the length of tenancy. If the Section 8 tenant is on a fixed term lease, and the lease will not be renewed, the landlord must give a 90-Day Notice of termination but the tenancy cannot be ended prior to the end of the lease.
- ✓ **Fixed Term Lease** - Unless there is an agreement to the contrary the tenancy automatically terminates at the end of the lease. To be courteous, however, a landlord may give a written notice of his/her intent to not renew the lease at its expiration. Neither the landlord nor the tenant is required to notify the other party if they do not intend to continue the tenancy after the end of the lease term. If the landlord does not intend to renew the lease or is aware that the tenant is not going to continue living there the landlord must give the tenant a notice of their right to a pre-move out inspection. The inspection cannot take place any earlier than two weeks prior to the end of the lease. If the landlord accepts rent from the tenant beyond the expiration date of the lease, the tenancy reverts to a month-to-month tenancy with all of the same Terms. If The Landlord Refuses To Accept Rent After The Expiration Of The Lease And The Tenant Remains In Possession Then The Landlord May Immediately File An Unlawful Detainer Without Further Notice.

### **Termination For Cause**

A landlord may terminate either a month-to-month tenancy or a fixed term lease at any time for cause. The cause for the termination must be clearly stated on the face of the notice. A landlord may issue the tenant one of several types of 3 Day Notices. A landlord who wishes to terminate the tenancy of a Section 8 (Housing Choice Voucher) tenant for cause must use one of the following notices: 30-Day Notice with Cause, 3-Day Pay or Quit, 3-Day Quit, or a 3-Day Perform or Quit. The landlord should refer to the HAP contract with the local housing authority administering the Section 8 Program. The contract specifically lists the acceptable causes for terminating the tenancy of a Section 8 tenant, and these causes differ depending on whether the tenant is on a fixed-term lease or a month-to-month rental agreement.

- ✓ **3 Day Pay or Quit Notice** - This notice is used when a tenant defaults on all or part of the rent due to the landlord. The notice cannot include late charges or any debt other than the exact amount of rent owed. The landlord has up to one year after the rent becomes due to issue a 3-Day Notice to Pay or Quit. The language in the notice shall include the name, telephone number, and address of the person to whom the rent payment shall be made. If payment may be made personally, the notice shall specify the days and hours that someone will be available to receive the payment. If the notice does not allow for personal delivery, the rent is deemed received by the owner upon the mailing of the rent, provided the tenant can show proof of mailing to the name and address provided in the notice.

The tenant has three calendar days after being served with a 3-Day Notice to Pay or Quit to pay the amount stated in the notice or vacate the property. The day after service of the notice constitutes the first day of the notice period and the tenant has until the end of the third day to comply with the notice. If the third day falls on a weekend or holiday, the tenant has until the end of the next business day to comply with the notice. If the tenant does not comply, i.e. pay the amount owed, within the three days and remains in possession, the landlord will file an unlawful detainer on the fourth day after the notice is served. If the tenant complies with the notice within the three days, the landlord can no longer use the notice as a basis for terminating the tenancy and filing an unlawful detainer.

- ✓ **3 Day Perform or Quit Notice** - This notice is used when a tenant is in breach of the lease or rental agreement or owes the landlord late fees or debts other than rent. Like with the 3-Day Pay or Quit

Notice, the tenant who is served with a 3-Day Notice to Perform or Quit has three calendar days after service to vacate the unit or comply with the notice by doing or not doing the act that is causing a breach of the agreement. Examples of situations often addressed in a 3-Day Notice to Perform or Quit include excessive noise, unauthorized occupants, and violation of house rules. A landlord may choose to serve a Notice of Termination without Cause along with the 3-Day Perform or Quit Notice.

- ✓ **3 Day Quit Notice** - This notice is used where a tenant commits waste, nuisance or illegal activity on the property. Unlike with a 3-Day Notice to Perform or Quit, the tenant who is served a 3-Day Notice to Quit has no opportunity to correct their actions and the tenancy is automatically terminated at the end of the three day period after the notice is served. Please be advised that this notice should be reserved for the most serious and non-correctable violations, as the courts frown upon such cancellations of tenancy.
- ✓ **Eviction Procedure - Residential Care Facilities for the Elderly – [Health & Safety Code §1569.683]**  
A residential care facility for the elderly is required to include additional information when providing a notice of eviction to a resident, including the reason for the eviction, the effective date of the eviction, and additional information informing the resident of his/her rights regarding evictions.

### **OTHER REASONS FOR TERMINATION**

#### **Destruction of the Unit**

In the event the unit is destroyed, the tenancy is automatically terminated. However, if the destruction is caused intentionally or through negligence of the tenant or his guests, the tenant may be liable for unpaid rent in addition to the damages caused.

#### **Housing as a Condition of Employment [CA Code of Civil Procedure §1161(1)]**

When a person's tenancy is conditioned solely on their employment with the landlord, the following apply:

- ✓ Unless the employee and landlord agree otherwise, the rental housing will be automatically terminated upon lawful termination of employment.
- ✓ The employer is not required to give the employee any notice of the termination of the tenancy; although a 72-hour notice is customary.
- ✓ If the employee does not vacate when requested, the landlord may start eviction proceedings.

#### **Sale of the Property**

The buyer of a rental property is bound by the terms of the original rental agreement between the seller and the tenants. If the tenants are subject to a lease for a specified period of time, the buyer must honor the terms of the lease and may not terminate the tenancy without cause or increase the rent during the lease term. If the tenants are subject to a month-to-month rental agreement, the buyer may terminate their tenancy with 30-days' written notice if they have lived at the property less than a year or with 60-days' written notice if they have lived at the property one year or longer.

#### **Termination of Tenancy by the Tenant's Abandonment of the Property**

Abandonment can occur when the tenant voluntarily gives up the premises without giving prior notice to the landlord. A tenant who abandons a rental unit may be subject to liability for rent due under a lease or a month-to-month agreement. If a tenant moves without giving notice, and if there is no legal reason for failing to give notice, such as uninhabitable condition, the landlord is entitled to rent for the period that the unit is vacant, not to exceed 30 days for a month-to-month agreement, or the period remaining on the lease in a lease situation.

**NOTE:** The landlord must make a good faith effort to re-rent the unit, and if the unit is re-rented, the landlord cannot collect double rent. [CA Civil Code §1951.2].

### **PROPER SERVICE OF TERMINATION NOTICES**

#### **Method of Delivery [CA Code of Civil Procedure §1162]**

The law has set out specific ways that the 3-Day, 30-Day or 60-Day or 90-Day Notices must be served. If one of these methods is not followed, a court might determine that the notice is invalid. If a landlord institutes an Unlawful Detainer based on an improperly served notice, the court might force the landlord to begin the process all over again. Thus, it is very important that the notice is properly served. It is strongly recommended the written notice be served personally. A reasonable attempt must be made to serve the notice by personal service either to the tenant, at the home or place of business. Anyone 18 years or older can serve the notice.

Proper methods of service of a 30-Day or 60-day or 90 Day Notice are listed below:

- ✓ Personal delivery to a tenant at the residence or place of business, or

- ✓ Leaving a copy for each of the resident(s) with a person of suitable age and discretion at the residence or usual place of business and mailing a copy to each resident by first class mail on the same date; or
- ✓ Posting the notice for each of the resident(s) in a conspicuous place on the property if there is no person of suitable age or discretion to be found and mailing a copy to each resident by first class mail.
- ✓ In the case of a 30/60/90-Day Notice, it may be served by certified or registered mail by either party.

### **Counting days [CA Civil Code §11]**

Counting days for purposes of notice of termination begins on the first day after the notice is served. Generally, an act that is required by law or contract to be performed on a day that happens to fall on a holiday, including Saturdays and Sundays, may be performed the next business day. For purposes of Notices of Termination of Tenancy, this means that if the final day of the notice period falls on a weekend or holiday, the tenant has until the end of the following business day to comply with the notice. For example, if the third day of a 3-Day Notice to Pay or Quit falls on a Sunday, the tenant has until the end of the day on Monday to comply with the notice and pay the rent owed. Similarly, if the 30<sup>th</sup> day of a 30-Day Notice to Terminate Tenancy falls on a holiday, the tenant has until the end of the following business day to vacate the property. Regardless of the law, in some cases a landlord may choose to file an unlawful detainer without giving the tenant an additional day to comply with the notice. Thus a tenant may wish to comply with a notice earlier rather than later in order to avoid the eviction process altogether.

### **SECURITY DEPOSITS**

**Definition:** Landlords usually will require a tenant to pay some sort of a deposit when a tenant moves in. It may be called a "Security Deposit", "Cleaning Deposit", "Last Month's Rent", "Key Deposit", "Pet Deposit", etc. The **total** amount of any or all pre-paid deposits cannot exceed two times the rent for an unfurnished apartment or three times the rent for a furnished unit. If the tenant possesses any water filled furniture, the landlord may increase the security deposit equal to one-half of one month's rent. [CA Civil Code §1940.5]. The law specifically states that no lease or rental agreement shall contain any provision characterizing a deposit as "non-refundable."

### **Landlord's Remedy for Insufficient Deposit**

If the security deposit in the landlord's possession is insufficient to cover all legal deductions, the landlord may send the tenant a demand letter for the balance and then proceed to small claims court if no money is recovered from the tenant.

### **Landlord's Rights to Use Deposits [CA Civil Code §1950.5]**

"Security" means any payment, fee, deposit or charge, including, but not limited to, an advance payment of rent, used or to be used for any purpose, including, but not limited to, any of the following deductions:

- ✓ The costs reasonably necessary to clean the property after the tenant has moved to return it to the same level of cleanliness as it was when they moved in.
- ✓ The costs reasonably necessary to repair damages to the property caused by the tenant which are above and beyond normal wear and tear.
- ✓ Rent owed by the tenant.
- ✓ The court may allow the deposit to be used for late charges, unpaid utility charges or other debts incurred by the tenant and left unpaid..

A landlord cannot use the deposit to repair the following:

- ✓ Ordinary wear and tear. Ordinary wear and tear is not clearly defined in the law. However a landlord should consider actual damage versus normal usage of the rental unit when determining the amount to be refunded.
- ✓ Pre-existing damage.
- ✓ Damage that existed on the property before the beginning of the rental period.

### **Tenant's Remedy for Bad Faith Retention of Security Deposit by Landlord [CA Civil Code §1950.5 (k)]**

If a tenant disagrees with the landlord's decision to keep any or all of a deposit, his options include:

- ✓ Contacting the landlord in writing to find out why the deposit was not returned. Keep a copy of the letter.
- ✓ If the landlord has taken money out to repair "normal wear and tear" or has acted unreasonably in using the deposit, the tenant may contact the landlord in writing and inform him/her that this is not a lawful use of a deposit and request the disputed portion of the deposit back. The tenant should keep a copy of the letter. If still dissatisfied the tenant contact the Small Claims Court Advisory Clinic or contact a private attorney. If the tenant or the landlord has filed in court for a refund or for additional damages, prior to or

on the day of trial the Small Claims Mediation Program provides the opportunity to voluntarily resolve small claims cases. To schedule pre-trial mediation call (916) 875-7843.

- ✓ The Small Claims Advisory Clinic at the Carol Miller Justice Center can provide assistance and answer general questions about filing an action in Small Claims Court.

### **Tenant's Rights to the Deposit and the Pre-Move Out Inspection [CA Civil Code §1950.5 (f)]**

Upon giving or receiving a notice terminating a lease or rental agreement or prior to the end of a fixed term lease, a landlord must inform the tenant in writing of the tenant's option to request, and be present for, an initial walk-through inspection of the unit which the landlord must honor no more than 2 weeks prior to termination of the tenancy. A tenant may choose not to be present during that inspection. During the initial inspection, the landlord must create and provide the tenant with a written itemized statement indicating what cleaning and or repairs the tenant can make in order to avoid charges to their deposit. This statement must be given to the tenant or left inside the unit. Proper notice must be given for that inspection. A landlord may not limit a tenant's right to an initial inspection by charging a fee for that inspection. The landlord's legal responsibility to conduct an initial inspection when requested is not conditioned on the tenant's ability to pay for the service. The landlord is still entitled to do a final inspection after the tenant has vacated the unit. For more detailed information contact a legal information service or a private attorney

A landlord is not required to provide notification of a tenant's right to an initial inspection when the tenancy is terminated under the following circumstances:

- ✓ The tenant continues in possession after the expiration of a three-day pay or quit notice for failure to pay rent, and the tenant has not paid rent; or
- ✓ The tenant continues in possession after the expiration of a three-day perform or quit notice, and the tenant continues to violate conditions or covenants of the lease or agreement; or
- ✓ The tenant continues in possession after the expiration of a three-day quit notice for maintaining or committing waste or nuisance on the property.

**Within three weeks (21 days) after a tenant has vacated the premises and turned in the keys, a landlord must provide the former tenant with a written itemized statement indicating the basis for, and the amount of, any security deposit used by the landlord, and must also return any remaining balance of the deposit at that time. The landlord need not provide the itemized statement or return the balance of the security deposit prior to either party giving notice to terminate the tenancy, or not earlier than 60 days prior to the expiration of a lease.**

The landlord is required to include with the itemized statement copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises. Specifically:

- ✓ If the landlord or landlord's employee did the work, the statement shall reasonably describe the work, including the time spent and the hourly rate charged.
- ✓ If the landlord or landlord's employee did not do the work, the landlord shall provide a copy of the bill, invoice, or receipt, as well as the name, address, and telephone number of the entity performing the work.
- ✓ If a deduction is made for materials or supplies, the landlord shall provide a copy of the bill, invoice, receipt, or vendor price list.
- ✓ If a repair cannot be done within 21 days after the tenant vacates the premises, the landlord may deduct a good faith estimate of the charges from the deposit and provide the estimate in the itemized statement. The landlord must then provide the tenant with a copy of the bill, invoice, or receipt within 14 days after the repair is completed.
- ✓ If the landlord does not have possession of the bill invoice, or receipt for repairs within 21 days after the tenant vacates the premises, the landlord must include the vendor's name, address and telephone number in the itemized statement. The landlord must then provide the tenant with a copy of the bill, invoice or receipt within 14 days after it is received.

The landlord need not provide documentation to support the itemized statement if either:

- ✓ The deductions for repairs and cleaning together do not exceed \$125.00 or
- ✓ The tenant signs a written waiver at the same time or after a notice terminating tenancy is given, or no earlier than 60 days prior to the expiration of a lease.

**NOTE:** Even if either of the above applies, a tenant has 14 days after receiving the itemized statement to request copies of the documentation, and the landlord must comply within 14 days of receiving the tenant's request.

### **Use of Tenant's Security Deposit [Civil Code §1950.5] After Termination/Foreclosure**

When the homeowner transfers or loses title to the property, as in a foreclosure, the homeowner must either return the security deposit to the tenant, minus any lawful deductions, or transfer the deposit to the new owner and notify the tenant by registered mail of the transfer of the new owner's name and address. Unless the previous homeowner returns the deposit to the tenant the new owner may not collect another deposit even if they have not received the deposit from the previous homeowner. It is the new owner's responsibility to obtain from the previous homeowner the deposit initially paid by the tenant. The tenant is entitled to the return of their deposit within 21 days of vacating the property, absent any lawful deductions. If the deposit is not returned, the tenant may sue both the previous homeowner and the new owner jointly, as both parties are legally responsible for returning the deposit to the tenant.

If the rental home is managed by a property management company, the tenant should contact the company immediately regarding the deposit. If the property owner no longer holds title and if the security deposit is in the property management company's possession, the company must transfer the deposit to the current title holder (i.e. bank or purchaser), or should refund the deposit to the tenant as soon as possible.

## **SECTION FIVE**

### **Unlawful Detainer (Eviction Process)**

#### **Summary Of The Unlawful Detainer (Eviction) Legal Proceeding**

When a landlord wants a tenant to move, in most instances the landlord must give proper written notice. If the tenant does not comply with the notice, the landlord's next step is to sue the tenant to get the property back. The landlord must also sue the tenant to get the property back where the tenant has given the landlord notice of their intent to move but then fails to move out. In either case, the lawsuit filed by the landlord is called an "Unlawful Detainer" action or eviction. Unless the renter fits the narrow definition of a lodger, and there are no other lodgers in the home, a landlord must go through the court process of evicting the renter.

Once the tenancy relationship has been terminated through any of the below, and the tenant is still occupying the premises, the landlord may bring an eviction lawsuit:

- ✓ A fixed-term lease expires without renewal;
- ✓ The employment for which the property was provided (e.g., onsite manager) terminates;
- ✓ The tenant has given a notice of termination of tenancy;
- ✓ The landlord has given a notice of termination of tenancy, with or without any fault of the tenant, and the demand of the notice is not met;

The landlord files a Summons, Complaint, and Civil Case Cover sheet with the clerk of the court, who gives back 2 'filed and endorsed' copies with the court seal and stamp.

The landlord then has anyone 18 or older serve process on each tenant by giving a Complaint packet to the tenant personally (Personal Service), or leaving it with an adult household member at the residence or an authorized person at the tenant's primary place of employment then mailing another copy to the tenant by U.S. Mail First Class (Substituted Service). If the process server tries to serve process 8 to 10 times without success, the landlord may obtain the court's permission to have the tenant served by posting one copy on the door and mailing another by certified mail (Posting and Mailing Service).

The tenant who has been served with the lawsuit papers has 5 days after Personal Service, or 15 days after service by other methods, within which to file one of the below with the clerk:

- ✓ Motion to Quash: to argue that the service of process was faulty; a hearing will be held. If successful, the tenant must be re-served properly; if not, the tenant will have 5 days to file an Answer.
- ✓ Demurrer: to argue that the landlord's pleading is legally insufficient, confusing, or contradictory on its face; a hearing will be held. If successful, the landlord will have to fix the problems and have the corrected pleading re-served on the tenant; if unsuccessful, the tenant will have 5 days to file an Answer.
- ✓ Answer: to let the court know the tenant's side of the dispute.

If the tenant does not file a response timely, the landlord is entitled to seek a default judgment, and, until the landlord has obtained a default against the tenant, the tenant may still file a response even after the time to respond has already elapsed. The landlord will normally obtain a clerk's default judgment and have a writ of possession issued immediately to take to the sheriff. Otherwise, the landlord may seek both possession and money judgment from the court, but because that requires a judge to review and sign there is normally a delay. Once the court judgment has been entered then the landlord may have a writ issued. The landlord gives the court-endorsed writ to the Sheriff's Civil Division, and the deputy will normally go out to the property the following business day to give or post a final Notice to Vacate, giving the tenant 5 days before being locked out.

Once the tenant files a response within the given time, or before the landlord has obtained a default, either party may ask the court to schedule a trial after mailing a copy of the Request to Set Case for Trial to the other party. By statute, a trial must be scheduled between 11 and 20 days from the date of that request. The other party has 5 calendar days from the date of mailing of the Request within which to file a Counter-Request to let the court know that the case is not yet ready for trial, to seek a jury trial, or to inform the court of any days the other party is not available for trial. Within days of the request, the court schedules the trial and notifies all parties of the trial date, time, and department.

The judge's decision will be entered within 48 hours of the trial date. If the landlord prevailed, the landlord has a writ of possession issued by the clerk and takes it to the Sheriff's Civil Division, who will normally go out to the property the following business day to give or post a final Notice to Vacate, giving the tenant 5 days before being locked out.

Within the 5 days, the tenant may file papers with the court for some relief. Please consult with the Unlawful Detainer Advisory Clinic, located in Room 310 at the Carol Miller Justice Center, 301 Bicentennial Circle, Sacramento, CA.

Once the tenant has moved out voluntarily or involuntarily, any subsequent attempts to regain entry without express permission from the landlord may be treated as an unlawful breaking and entering or trespassing. If the tenant's personal belongings are left behind, the landlord can leave them alone or move them elsewhere. Either way, the landlord must ensure that the items are not left where they can be stolen, damaged, or destroyed. The tenant has 18 days within which to notify the landlord in writing that the items were not abandoned and request that the landlord return them. The parties may agree to a mutually convenient time and location of the pickup, but it must be within 72 hours of making the request. The landlord must not make the release of the items contingent upon paying the judgment or past rent, but must make a written request for moving costs and storage fees and serve it personally or by mail within 5 days after receiving the tenant's written request. If the landlord does not comply with the tenant's proper request to reclaim personal property, and wrongfully retains it or otherwise disposes of it, the landlord can be held liable to the tenant in a civil lawsuit for damages, including reasonable attorney's fees and costs.

If the tenant does not make the request within 18 days of moving out, the landlord has to assess the aggregate fair market value of the items left behind. If the value is less than \$300, the landlord may dispose of the items, use them, or sell them in a private sale. The landlord using or selling the items must give proper credits to the tenant for the value of the items. If the aggregate fair market value of the abandoned items is \$300 or more, they must be sold through a public sale, which is governed by a rigid set of rules in the statutes.

All the judgment enforcement vehicles are available to the landlord who obtained a money judgment against the former tenant, but the primary ones are wage garnishment and bank levy. Details of different judgment enforcement procedures are available from the Advisory Clinic at the Carol Miller Justice Center. (See Section SIX, p. 49 for more information on the Court Hours and Programs).

### **Consequences Of An Unlawful Detainer Action**

#### **Credit Reports [CA Civil Code §§1785.1-1786.56]**

Some credit reporting agencies/companies collect and report the names of all individual defendants listed on unlawful detainer eviction actions. Credit reporting agencies and the public in general, are not allowed access to the court files for 60 days after the filing of an unlawful detainer. After the 60 days have passed, credit-reporting agencies can report evictions and judgments for up to seven years. However, if the tenant prevails in the unlawful detainer action during the first 60 days after the action is filed, the unlawful detainer does not become public information.

Although there is the 60 day delay for a credit reporting agency to access eviction information, a tenant should be aware that the landlord can report eviction/unlawful detainer filings directly to the credit reporting agency at the time of filing the action. If a tenant loses a case and has a judgment against him/her, the credit report should reflect the payment and read "Judgment Satisfied" once the payment has been made and a "Satisfaction of Judgment" has been filed.

### **Prior Record Of Eviction**

Tenants should be aware that the filing of an unlawful detainer lawsuit (eviction) is a matter of public record. Even if the parties agree to a settlement or if the tenant moves out prior to the hearing, the fact that the eviction was filed becomes public and cannot be undone.

### **NOTE:**

If at all possible a tenant should try to avoid having an eviction filed against them. Some steps which might be helpful if the tenant is behind in rent:

- ✓ If a tenant finds themselves in a position of being unable to pay some or all of the rent which is due, contact the landlord/agent as soon as possible to see if a payment plan can be agreed to before a 3 Day-Pay or Quit notice is served.
- ✓ If management is agreeable to a payment plan to catch up with late rent the tenant should be certain that the plan is going to be followed and that the tenant will make the payments as agreed to.
- ✓ In the event that management is not willing to accept a payment plan then the tenant should move as quickly as possible and leave the unit in a clean and undamaged condition.
- ✓ The tenant will be responsible for any unpaid rent, damages, cleaning beyond normal wear and tear. If not paid the landlord can file an action in Small Claims Court or turn it over to a collection agency, which will be reported to the credit bureaus.
- ✓ Give a forwarding address to the landlord/agent.



### **Wage Garnishment/Bank Account Attachment/Forced Sale of Property [CA Code of Civil Procedure §695 et seq., §706.010 et. seq.]**

If the judgment requires the tenant to pay back rent, the landlord may, with a court judgment, garnish up to 25% of the tenant's net wages, force the sale of his/her property that is not exempt from such procedures, or attach or put a freeze on the tenant's bank account until the amount is paid. Certain monies, such as S.S.I., social security benefits, welfare benefits, and private pensions are exempt from such a garnishment. A tenant may consult an attorney to determine whether he/she is subject to garnishment or forced sale. In the County of Sacramento, the courts generally do not allow for the forced sale of a tenant's property to satisfy a judgment.

### **After the Judgment has been Satisfied [CA Code of Civil Procedure §§724.010-724.050]**

After the tenant has paid the amount of the judgment, the tenant should make a written request to the landlord asking the landlord to file the "Notice of Satisfaction of Judgment" with the court to formally end the dispute. The landlord has 15 days to comply with this request. If the landlord fails to comply, the tenant can make a motion to the court to force the landlord to comply. The landlord may also be ordered to pay actual damages, attorney's fees and an additional \$100 to the tenant

### **Procedural Issues**

#### **Unlawful Detainer Waiver of Court Fees**

A fee is required when filing a written response to the court. However, fee waivers may be granted to low-income persons. Fee waiver forms can be obtained at the Advisory Clinic, the Court Clerk's Office, Legal Services of Northern CA, or Community Legal Services at McGeorge School of Law.

#### **Authorized Methods of Service of the Summons and Complaint**

- ✓ Personal delivery (personally leaving a copy with a named defendant) - service is complete at the time of delivery [CCP §415.10]. or
- ✓ Substitute service (Leaving a copy with an adult at the tenant's home or workplace and thereafter mailing a copy by first class mail to the person where the complaint was left) - service is complete on the 10<sup>th</sup> day after the mailing [CCP §415.20]. or
- ✓ Posting and mailing (Posting a copy on the premises and mailing a copy by certified mail to the named tenant's last known address pursuant to court order) - service is complete on the 10<sup>th</sup> day after posting and mailing [CCP §415.45].

Where the Summons and Complaint are served by personal delivery, the tenant has five calendar days after being served to file a response with the court. If served by substitute service, the tenant has 15 days after the date the Summons and Complaint is mailed to file a response. If served by posting and mailing, the tenant has 15 days after the Summons and Complaint are posted and mailed to file a response. If the last day to file a response falls on a Saturday, Sunday, court holiday, the tenant has until the end of the following business day to

file.

### **Sheriff's Lockouts [CA Code of Civil Procedure §§715.010-715.040]**

Once a landlord has won an Unlawful Detainer lawsuit against the tenant, the court will issue a "Writ of Possession" to the landlord. The Sheriff Department's Civil Division must then serve a "Notice to Vacate" by leaving a copy with the occupant personally, or posting it on the door. The Notice must state if the tenant does not vacate within five days of the date that the Writ is posted or served that the Sheriff can remove the tenant and give possession back to the owner. Included in the notice is a statement that any personal property, except a mobile home, remaining on the property will be sold or otherwise disposed of unless the judgment debtor or other owner pays the owner the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the real property. In Sacramento County the Civil Division is located at 3341 Power Inn Rd., No. 313 and can be reached by calling (916) 875-2665, for information on the process and the fees involved.

### **ABANDONMENT**

#### **Notice of Belief of Abandonment**

CA Civil Code §1951.3(d) sets forth a sample "Notice of Belief of Abandonment". The section requires the notice be given in "substantially" the same format as the sample notice. The notice should include the time period in which the tenant must respond. The period to respond varies depending on the method of delivery. The period is 15 days if the notice is delivered in person or 18 days if the notice is sent by first class mail.

#### **Service of Notice of Belief of Abandonment**

Notice of belief of abandonment may be served:

- ✓ In person; or
- ✓ By mail to the tenant's last known address. However, if a landlord believes that by sending the notice to the last known address it will not reach the tenant, then notice must also be sent to other addresses, if any, where the tenant could be expected to receive mail.

**NOTE:** The landlord should keep a copy of any notice(s) sent, and serve/send a copy of the notice to EACH tenant residing on the premises.

#### **Tenant's Response to the Notice of Belief of Abandonment [CA Civil Code §1951.3]**

When a tenant responds to a 'Notice of Belief of Abandonment', the response must be in writing within the time period stated in the notice. The tenant's response should include:

- ✓ A statement of the tenant's intent of whether he/she is abandoning the premises; and
- ✓ The address at which the tenant may be served by certified mail in an action for unlawful detainer.

#### **When a Landlord May Re-enter the Abandoned Premises**

##### **Re-entry When the Abandonment Notice Procedure Is Used**

If the requirements of CA Civil Code §1951.3 have been met (see procedure to establish abandonment, above), and there has been no response by the tenant to the 'Notice of Belief of Abandonment' within the time period stated in the notice, then the landlord can re-enter and re-let the premises.

##### **Re-entry When the Abandonment Notice Procedure Is Not Used**

It is risky and it is not suggested for a landlord to re-enter if the procedures set forth in CA Civil Code §§1951.2-1952.2 are not followed. However, if a landlord believes he/she can establish abandonment by other means, it is strongly recommended that the advice of an attorney be sought to avoid potential liability.

**NOTE:** If the tenant has abandoned the premises and left any personal property, it is important to dispose of this property in accordance with the law.

#### **Abandoned Personal Property And Pets**

##### **Landlord's Responsibilities Regarding Abandoned Personal Property**

If the tenant leaves his/her personal property on the premises after he/she has terminated, vacated or has been evicted from the premises, the landlord must comply with the legal requirements for disposal of the property.

- ✓ The landlord must store the property in a safe place.
- ✓ The landlord must give a written 'Notice of Right to Reclaim Abandoned Property' to the tenant's last known address, or any other address where the landlord has reason to believe it will be received by the tenant. The notice shall describe the property, assessing reasonable costs of storage, where the property can be claimed, the date the property must be claimed by, and a means to get in touch with the landlord.

- ✓ The landlord must either personally deliver the notice to the tenant or send it by first class mail. If the landlord sends the notice by mail a copy must be sent to the property vacated by the tenant as well as the tenant's last known address if different from the vacated property address. If the landlord has reason to believe that the tenant will not receive the notice at the last known address the landlord should also send a copy of the notice to any other known address.
- ✓ If the notice is served personally the landlord must give the tenant at least 15 days to recover the property. If the notice is served by mail the landlord must give the tenant at least 18 days to recover the property.
- ✓ If the tenant claims the property within the notice period the landlord must release the property to the tenant. The landlord may require the tenant to pay reasonable storage fees prior to releasing the property but cannot attempt to collect unpaid rent or other fees. [CA Civil Code §1987]. If the landlord stores the personal property on the premises the cost of storage shall be the fair rental value of the space reasonably required for such storage. [CA Civil Code §1990].
- ✓ If the tenant does not reclaim his/her belongings within the time allowed in the notice, and the notice to the tenant stated that the personal property would be sold at a public sale, the landlord shall release the property to the tenant if he claims it prior to the time it is sold and pays the reasonable storage costs, advertising costs, and sale costs incurred prior to the time the property is withdrawn from the sale. [CA Civil Code §1987].
- ✓ If the tenant does not reclaim his/her belongings within the time allowed in the notice and if the landlord has complied with the proper procedures the property must be sold at a public sale. If the property is less than \$300 value it may be retained by the landlord or disposed of in any manner. If the property is believed to be valued at more than \$300 it shall be sold at public sale. If there is a public sale it must be advertised once a week for two consecutive weeks. The last advertisement shall not be less than five days before the sale is to be held. [CA Civil Code §1988].
- ✓ The tenant may claim the proceeds of the sale from the landlord within thirty days after the date of the sale. The landlord may deduct for costs of storage, advertising and sale. If the tenant does not claim the proceeds, the landlord must deposit the money, after deductions, with the County Treasurer not later than thirty days after the sale. The tenant has one year to file a claim with the County Treasurer to receive the money. The landlord must follow detailed procedures when disposing of property left by a tenant. When utilizing this code section, a landlord may wish to consult with an attorney to avoid liability for conversion.

#### **Tenant's Right to Reclaim Personal Property**

**NOTE:** The following procedures do not apply if a landlord has issued a "Notice of Right to Reclaim Abandoned Property" to a tenant.

In cases where a landlord does not provide a former tenant with a written notice of abandoned property, a tenant may request that a landlord return any personal property left behind when the tenant vacated the premises. In this case, CA Civil Code §1965 applies as follows:

- ✓ The request must be in writing, and must be made within 18 days of the tenant's vacating the premises, and must include a description of the personal property and the mailing address of the tenant;
- ✓ The landlord must have actual possession or control of the personal property in question;
- ✓ The tenant must agree to remove the personal property at a mutually agreed upon time with the landlord. In any case, the tenant must remove the property within 72 hours of making the request.

When a landlord receives a tenant's written request to reclaim personal property, the landlord can require the tenant pay "reasonable costs associated with the landlord's removal and storage of the personal property" as a condition of releasing the personal property.

The landlord's request for storage fees or costs of removal must be in writing and either mailed to the tenant at the address specified in the tenant's written request, or personally presented to the tenant within five (5) days after landlord's actual receipt of the tenant's request.

"Reasonable costs associated with the landlord's removal and storage of the personal property" includes:

- ✓ The reasonable costs actually incurred by the landlord in removing the personal property from its original location, including "disassembly and transportation" of the property to storage.
- ✓ Reasonable storage costs actually incurred, which may not exceed the "fair rental value" of the storage space reasonably required to store the property.

A landlord who fails to comply with a tenant's proper request to reclaim personal property under CA Civil Code §1965, and who wrongfully retains it, or otherwise disposes of it, can be liable in a civil action to the tenant for damages, including reasonable attorney's fees and costs, subject to proof at trial.

### **Abandoned Pets**

Civil Code §1815-1816 require any person or entity to notify animal control if the person or entity has knowledge that a live animal has been abandoned or left in or about any premises or real property after it has been vacated or immediately preceding the termination of a lease or other rental agreement or foreclosure of the property. Animal control officers who respond shall be entitled to exercise the right afforded them to secure a lien for the purpose of recovering the costs of attempting to rescue the animal.

The Humane Society of the United States and the Regional Human Rights/Fair Housing Commission encourages tenants and owners facing relocation to take their pets with them. Abandoning pets, for any reason, is not only irresponsible, but is also illegal. There are alternatives to leaving pets behind, such as contacting a local shelter or rescue group. Further information is available at [www.pets911.com](http://www.pets911.com).

## **SECTION SIX** **Carol Miller Justice Center Programs**

With funding provided by the Superior Court of Sacramento County, The Regional Human Rights/Fair Housing Commission offers the following: FREE services to assist the general public at the Carol Miller Justice Center (CMJC), 301 Bicentennial Circle, #330. Advice and mediation is offered both in Small Claims Court monetary disputes and for Superior Court unlawful detainer (eviction) disputes. The CMJC is open from 8:00 a.m. to 4:00 p.m. Monday through Friday.

The following programs are available to the public at the Carol Miller Justice Center.

### **Small Claims Court**

Small Claims Court is a special court where disputes may be resolved in a quick and relatively inexpensive manner. There is no discovery process and attorneys are not allowed to represent either party during the initial phase of trial. Anyone can sue in Small Claims Court. **As of January 1, 2012, individuals can sue for up to \$10,000 unless they are suing guarantors (or if their claim is for personal injury) and \$5,000 for a business. In Small Claims Court, you may only sue for money damages.**

### **Small Claims Advisory Clinic**

Monday – Friday (8:00 a.m. to noon and 1:00 p.m. to 4:30 p.m.)

- ✓ Provides information to both plaintiffs and defendants.
- ✓ Will explain how to determine if Sacramento Court is the proper court for your claim.
- ✓ Provide you with necessary forms and help you fill them out correctly.
- ✓ Tell you to how enforce your judgment.
- ✓ Tell you how to arrange payments by installments.
- ✓ Answer other questions about the Small Claims process.
- ✓ Walk in to Room 330 of the Carol Miller Justice Center or call (916) 875-7846. No appointment is necessary.

### **Small Claims Mediation Program**

Monday – Friday (8:00 a.m. to noon and 1:00 p.m. to 4:30 p.m.) Call (916) 875-7846 for more information.

- ✓ A mediator meets with you and the other party to help create a solution to the dispute.
- ✓ Mediation takes place outside the courtroom on the day scheduled for your hearing.
- ✓ Mediation helps prevent the expansion and escalation of destructive conflict.
- ✓ Mediation promotes communication and cooperation.
- ✓ Mediation is less costly than litigation.

## **Frequently Asked Questions Regarding Small Claims Court**

### ***What kinds of cases are appropriate for Small Claims Court?***

In Small Claims Court, individuals can sue for money damages up to **\$10,000 per individual**. Businesses are limited to money damages up to \$5,000.

### ***What do you need to file a claim in Small Claims Court?***

To file a claim in Small Claims Court, you will need to know the full name and address of the person you want to sue. Prior to filing your claim you must demand payment from the party you wish to sue and wait a reasonable amount of time for a response.

***Can you sue someone who lives in another state?***

The Small Claims Court generally does not have jurisdiction over persons or entities located out of state. However, there are two exceptions: (1) in a case involving real property located in California where the owner of real property lives outside of California, and (2) when a car accident occurred on California public roads with a driver who lives outside of California.

***How much does it cost to file a Small Claims Case?***

The cost of your alleged damage determines the filing fee. As of the date of publication, if you are making a claim for damages in the amount of \$1,500 or less, the filing fee is \$30. For claims between \$1,500- \$5,000 the filing fee is \$50. To file a claim for more than \$5,000 but less than or equal to \$7,500 the filing fee is \$75. If you have filed more than 12 small claims within the previous 12 months, then you are considered a Multiple Filer and the filing fee is \$100.

**NOTE:**

Please check with the Court for current fees because filing costs may be changed at any time during the year. Fee waivers may be granted to low-income persons. Fee waiver forms can be obtained at the Advisory Clinic, the Court Clerk's office, Legal Services of Northern CA, or Community Legal Services at McGeorge School of Law.

***How can I file a claim?***

Claims may be filed online at [www.saccourt.com](http://www.saccourt.com) or at the Small Claims Court in the Carol Miller Justice Center located at 301 Bicentennial Circle at the corner of Folsom Boulevard and Power Inn Road. The clerk's office is open Monday through Friday from 8:30 am to 4:00 pm. The Small Claims Advisory Clinic is open from 8:00 am to 4:00 pm.

***Is there someone you can talk to for help?***

Yes. By law every county in California must provide a program of free advice to small claims litigants. In Sacramento County you may call (916) 875-7846 or come into our clinic.

***Is there an opportunity to resolve the issue without going to court?***

Yes. Prior to going to court, as a defendant or plaintiff, you can request mediation. If both parties agree to mediation, the case can be discussed with an attorney through the Small Claims Mediation Program. If both parties are unable to reach an agreement, then you may proceed to trial as scheduled.

***What happens if I lose at trial?***

If you filed a case in Small Claims Court, then as a plaintiff you have no right to appeal. If you are the party being sued, or the defendant then you may appeal the judgment within 30 days of the date of mailing of the Notice of Entry of Judgment. To file a Notice of Appeal will cost \$75. In the event that a defendant did not appear at the trial, then the defendant may file a Motion to Vacate the judgment within the 30 day time limit. Filing a Motion to Vacate costs \$20.

***What if I am unable to attend the court date?***

Either party may file a Request for Postponement of Hearing for a \$10 filing fee. Requests must be made more than 10 days prior to the trial date. Requests made less than 10 days prior to the court date may be decided on the day of trial.

***After I win a judgment how can I collect my money?***

After you receive your judgment in the mail, you need to wait 30 days from the date of mailing before you can start enforcing your judgment. There are three primary ways of enforcing a judgment through the courts: a bank levy, wage garnishment or a lien on real property. For more information about this please contact the Small Claims Advisory Clinic.

This section is not meant to be a guide to Small Claims Court but merely a brief summary of the process for informational purposes only. There are many other procedures and processes involved, please discuss your questions with the Small Claims Advisory Clinic.

**Unlawful Detainer (Eviction) Advisory Clinic:**

Monday – Friday (8:00 a.m. to noon and 1:00 p.m. to 4:00 p.m.)

- ✓ The Advisory Clinic does not represent landlords or tenants in Court.
- ✓ Once an owner files in court the tenant will be served a Summons and Complaint and the tenant has five calendar days to answer.
- ✓ If the tenant does not answer the owner may be awarded a default, or automatic judgment. If the default is granted, the tenant loses the case.

- ✓ The Advisory Clinic attorneys will assist landlords and tenants with forms, fee waivers, subpoenas, Writ of Possession, Stay of Execution, default judgments etc.
- ✓ Walk in only – first come first served basis.

### **Unlawful Detainer (Eviction) Pre -Trial and Day of Trial Mediation Program**

Monday – Friday (8:00 a.m. to noon and 1:00 p.m. to 4:00 p.m.)

Mediation is not a court trial.

- ✓ Mediation is a process by which a mediator helps parties to settle a dispute.
- ✓ Both parties must agree to the mediation before it will be assigned to a trained mediator experienced in landlord-tenant law.
- ✓ If an agreement is reached the mediator will put it in writing and the judge will sign it. The agreement then becomes an order and will be entered into the court record.
- ✓ Both sides are bound by the written agreement.
- ✓ There are benefits to settling the case prior to trial. For the tenant, settling the case can keep a judgment from being entered against you and damaging your credit report; negotiating a payment plan may mean you will be able to pay what you owe over a reasonable time.
- ✓ For the landlord, settling the case may mean you receive possession of your property more quickly, a negotiated payment plan makes it more likely you will get what is owed and attorney fees and court costs may be lessened by a quicker resolution.
- ✓ Mediations can be held the day of trial if both parties agree.
- ✓ Mediations may be scheduled prior to the day of trial by calling (916) 875-7843 and may be requested by either party.

#### **NOTE:**

- ✓ The Clinic generally closes at noon for a one hour lunch but may close later if assistance is still being provided at that time. Although the Clinic provides service until 4:00 p.m. the waiting list may be closed earlier depending on the number of persons waiting for assistance.
- ✓ At any point before the trial begins, the tenant can speak with the landlord or landlord's attorney to attempt to settle the case and reach an agreement. This agreement should explain when and if the tenant should move and how much, if any, the tenant should pay, or if the landlord should fix the uninhabitable conditions and what the reasonable value of the rent should be.
- ✓ Any agreement should be in writing and signed by all parties. If an agreement is reached, the tenant should make certain that a dismissal of the case is filed before any deadline passes which he/she must meet. For example, if a dismissal is not filed before the five-day deadline to file a response, the tenant should go ahead and file a response. If an agreement is reached before the day of trial and a dismissal has not been filed by the day of trial, the tenant should go to trial to make certain that the case is dismissed, or they should show the judge a copy of the agreement.
- ✓ If no agreement is reached before the day of trial, mediation services are available on the day of trial through the Unlawful Detainer Mediation Program.

## **SECTION SEVEN**

### **Housing Choice Voucher Program**

#### **IN GENERAL**

The Section 8 Certificate and Voucher programs have been merged into one program called the Housing Choice Voucher Program. The Housing Choice Voucher program is a three-way partnership between owners/agents, the Public Housing Authority, and the family. The following rules apply:

- ✓ The tenant will be subjected to screening (i.e. credit check, tenant history etc.) just as other rental applicants are according to the owner's policies. This may require a fee.
- ✓ The tenant will be responsible for their security deposit.
- ✓ The tenant will be responsible for finding their own housing if they are on a Voucher program but the unit must meet the Housing Quality Standards criteria for safe, decent and sanitary housing.
- ✓ As soon as the tenant locates housing they must turn in the *Request for Tenancy Approval* to the Public Housing Authority so that it can be determined if the rent being asked is within the approved rental amount. The tenant should not move into the rental until the unit has passed inspection and meets the required Housing Quality Standards.
- ✓ The tenant will have a lease for the first year (in some situations the Public Housing Authority will allow a shorter term lease), which begins on the first day of the initial term of the lease, and terminates on the last day of the term of the lease. The tenancy then becomes a month to month agreement.

- ✓ The tenant can appeal an adverse action taken by the Public Housing Authority (such as denial of an add-on person, denial of a reasonable accommodation request, inspections, proposed termination of eligibility, etc.). Hearings are scheduled as needed and must be requested within 14 days of the disputed decision notice. If the tenant qualifies for a hearing, a hearing request form will be mailed to the tenant.
- ✓ After the first year the contract rent may, **if approved by the Housing Authority**, be increased with proper written notice to the tenant and the contract may be amended with a copy served to the Housing Authority.
- ✓ A 30-Day Notice for cause to vacate may be served on the tenant.
- ✓ A landlord may also serve a 3-day Pay or Quit, 3-day Perform or Quit, or a 3-day Quit notice.

In order to terminate a tenancy without cause, the landlord must serve tenant a 90-Day Notice. However, the tenancy cannot be terminated prior to the end of the initial lease term. Even if the notice period extends beyond the end of the lease, the tenant is only responsible for their share of the rent.

- ✓ Any landlord who terminates, or fails to renew his housing contract with the Sacramento Housing and Redevelopment Agency, or other government agency, must serve the tenant with a 90-day written notice to end the tenancy [CA Civil Code §1954.535]. During that 90-day period the tenant is only responsible for their share of the rent.
- ✓ The tenant may apply for a voluntary move as long as they have fulfilled the initial lease term. In order to start a new housing assistance payment contract with a new owner/agent, the tenant is required to give a 30-Day Notice of Intention to Vacate to the current owner/agent and to the Housing Authority to determine eligibility to relocate with voucher assistance.
- ✓ Upon the Housing Authorities approval the tenant may take their Housing Choice Voucher with them after the first year to any place in the United States.
- ✓ Foreclosure: The immediate owner after foreclosure takes the property subject to the lease between the prior owner and the Section 89 tenant and subject to the housing assistance payment contract between the prior owner and the public housing authority. Under California law, the Section 8 tenant would also be entitled to 90 days notice prior to non-renewal of the lease or termination of a subsequent month-to-month tenancy.

Under Federal law, if the immediate owner after foreclosure will occupy the unit as a primary residence, the owner may terminate the Section 8 lease with 90 days notice to the tenant.

### **Housing Assistance Payment (Hap) Contract-Excerpts**

The following language is taken from the Housing Choice Voucher Program, HUD Handbook 7420-8, Form HUD-52641 (1/2007) and is found in the Housing Assistance Payment (HAP) contract.

### **Obligations of the Family**

HUD Handbook Paragraph 4

- ✓ When the family's unit is approved and the HAP contract is executed, the family must follow the rules listed below in order to continue participating in the housing choice voucher program.
- ✓ The family must:
  - Supply any information that the PHA or HUD determines to be necessary including evidence of citizenship or eligible immigrations status, and information for use in a regularly scheduled re-examination or interim reexamination of family income and composition.
  - Disclose and verify social security numbers and sign and submit consent forms for obtaining information.
  - Supply any information requested by the PHA to verify that the family is living in the unit or information related to family absence from the unit.
  - Promptly notify the PHA in writing when the family is away from the unit for an extended period of time in accordance with PHA policies.
  - Allow the PHA to inspect the unit at reasonable times and after reasonable notice.
  - Notify the PHA and the owner in writing before moving out of the unit or terminating the lease.
  - Use the assisted unit for residence by the family. The unit must be the family's only residence.
  - Promptly notify the PHA in writing of the birth, adoption, or court-awarded custody of a child.
  - Request PHA written approval to add any other family member as an occupant of the unit.
  - Promptly notify the PHA in writing if any family member no longer lives in the unit.
  - Give the PHA a copy of an owner eviction notice.
  - Pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease.

- Additional obligations include, but are not limited to: (Please refer to Housing Choice Voucher Rental Assistance Program, Introduction for Rental Property Owners and Agents, Sacramento Housing & Redevelopment Agency, 1210 G Street, Sacramento, CA 95814)
- ✓ The Family **Must Not**:
  - Own or have any interest in the unit.
  - Commit any serious or repeated violation of the lease.
  - Commit fraud, bribery, or any other corrupt or criminal act in connection with the program.
  - Engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and person residing in the immediate vicinity of the premises.
  - Sublease or let the unit or assign the lease or transfer the unit.
  - Damage the unit or premises (other than damage from ordinary wear and tear) or permit any guest to damage the unit or premises.
  - Engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other resident and person residing in the immediate vicinity of the premises.

### **Obligations of the Owner**

Source: Housing Assistance Payments Contract (HAP) Contract  
Part B of HAP Contract: Body of Contract

- ✓ Maintenance, Utilities and Other Services:
  - The owner must maintain the contract unit and premises in accordance with the housing quality standards (HQS).
  - The owner must provide all utilities needed to comply with the HQS.
  - If the owner does not maintain the contract unit in accordance with HQS, or fails to provide all utilities needed to comply with HQS, the PHA may exercise any available remedies. PHA remedies for such breach include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract. The PHA may not exercise such remedies against the owner because of an HQS breach for which the family is responsible, and that is not caused by the owner.
  - The PHA shall not make any housing assistance payments if the contract unit does not meet the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within the period specified by the PHA.
  - The PHA may inspect the contract unit and premises at such times as the PHA determines necessary, to ensure that the unit is in accordance with HQS.
  - The PHA must notify the owner of any HQS defects shown by the inspection.
  - The owner must provide all housing services as agreed to in the lease.

### **Termination of Tenancy by the Owner**

Source: U. S. Department of Housing and Urban Development, Housing Assistance Payments Contract (HAP), Section 8 Tenant-Based Assistance Housing Choice Voucher Program

*Paragraph 8, b. Grounds*

- ✓ During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:
  - Serious or repeated violation of the lease;
  - Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit and the premises;
  - Criminal activity or alcohol abuse (as provided in paragraph 8.c, HAP contract, 'Criminal activity or alcohol abuse, please refer to HUD handbook 7420.8, Form HUD-52641 (1/2007); or
  - Other good cause (as provided in paragraph 8.d, HAP contract 'Other good cause for termination of tenancy', please refer to HUD handbook 7420.8, Form HUD-52641 (1/2007).

*Paragraph 8, d. Other good cause for termination of tenancy.*

*(Please refer to HUD handbook 7420.8, Form HUD-52641 (1/2007).*

- ✓ During the initial lease term, other good cause for termination of tenancy must be something the family did or failed to do.
- ✓ During the initial lease term or during any extension term, other good cause includes:
  - Disturbance of neighbors,

- Destruction of property, or
- Living or housekeeping habits that cause damage to the unit or premises
- ✓ After the initial lease term such good cause includes:
  - The tenant's failure to accept the owner's offer of a new lease or revision
  - The owner's desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit; or
  - A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, the owner's desire to rent the unit for a higher rent).

*Paragraph 8, e. Protections for Victims of Abuse*

- ✓ An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as serious or repeated violations of the lease or other "good cause" for termination of the assistance, tenancy, or occupancy rights of such a victim.
- ✓ Criminal activity directly relating to abuse, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of domestic violence, dating violence, or stalking.

This Section, as of January 2007, also allows a landlord to remove a household member on the lease who engages in criminal acts of physical violence against family members or others. This action may be taken without evicting, penalizing the victim of the violence who is also a tenant or lawful occupant. Nothing in this section limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenants household, provided that the owner, manager or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate.

*Please refer to HUD handbook 7420.8, Form HUD-5641 (1/2007) for complete information*

*Paragraph 8, f. Eviction by court action*

*(Please refer to HUD handbook 7420.8, Form HUD-52641 (1/2007))*

The owner may only evict the tenant by a court action.

*Paragraph 8, g. Owner notice of grounds*

*(Please refer to HUD handbook 7420.8, Form HUD-52641 (1/2007))*

- ✓ At or before the beginning of a court action to evict the tenant, the owner must give the tenant a notice that specifies the grounds for termination of tenancy. The notice may be included in or combined with any owner eviction notice.
- ✓ The owner must give the PHA (Public Housing Authority) a copy of any owner eviction notice at the same time the owner notifies the tenant.
- ✓ Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law.

**SACRAMENTO HOUSING & REDEVELOPMENT AGENCY HOUSING CHOICE VOUCHER PROGRAM**

Owner Services  
1210 G Street  
Sacramento, CA 95814

Applications/Operations  
701 12<sup>th</sup> Street  
Sacramento, CA 95814

Applications Line (916) 492-2244

Housing Choice Voucher and Conventional Housing Line Information (916) 440-1300

Operations Phone (916) 440-1390

Operations Fax Line (916) 448-5060

Available housing – Go to [www.shra.org](http://www.shra.org) and click Housing Choice Voucher and follow links

Any questions should be addressed to the  
Sacramento Housing & Redevelopment Agency (SHRA)  
701 12<sup>th</sup> Street, Sacramento, CA 95814

## SECTION EIGHT Mobile Home Parks

### GOVERNING LAW

#### Emergency Preparedness Plans

- ✓ Health & Safety Code § § 18603 & 18871.8 requires the following:  
The owner or operator of a mobile home park or a special occupancy park must adopt and post an emergency preparedness plan by September 10, 2010 that incorporates emergency procedures identical or comparable to those compiled by the former Office of Emergency Services.
- ✓ In parks with 50 or more units, the park's designated emergency contact person must be familiar with any emergency preparedness plans for the park.
- ✓ A state or local enforcement agency shall determine whether park management has complied with the bill's requirements, and requires park management to correct a violation within 60 days of receiving notice from the enforcement agency.

#### Mobile Home Ombudsman

Questions on inspections and problems other than park management issues should be directed to the Mobile Home Ombudsman at 1-800-952-5275. It is suggested calls should be made between 9:00 a.m. and 10:00 a.m. and 1:30 p.m. to 2:30 p.m. on business days. Messages may also be recorded.

#### Mobile Home Residency Law (MRL)

The MRL is the 'landlord-tenant law' for mobile home parks, found in the CA Civil Code. The MRL spells out the rights and obligations of the park owner/management and mobile home owners or residents renting to such issues as notices of rent increases, rental agreements, resale of a home in the park, or termination of tenancy. Although, state or local government agencies do not enforce these Civil Code provisions you may call the Regional Human Rights/Fair Housing Commission for assistance.

A copy of the text of this chapter (MRL) shall be attached as an exhibit with the rental agreement and shall be incorporated into the rental agreement by reference.

**Management shall do one of the following prior to February 1 of each year, if a significant change was made in the chapter by legislation enacted in the prior year: (1) Provide all homeowners with a copy of this chapter; (2) Provide written notice to all homeowners that there has been a change to this chapter and that they may obtain one copy of this chapter from management at no charge. Management must provide a copy within a reasonable time, not to exceed seven (7) days upon request. (amended; Stats. 2010)**

#### Mobile Home Parks Act

The Mobile Home Parks Act establishes health and safety (building code) requirements for both parks and mobile home installations. These code requirements spell out the minimum standards for park common area facilities, such as roads and utility systems, as well as code requirements for mobile home and accessory installations. The Department of Housing and Community Development (HCD) or delegated local government agencies enforce the Parks Act.

#### Violations

Violations of the Mobile Home Residency Law, like provisions of conventional landlord-tenant law, are enforced by the courts; that is, the disputing parties must enforce the MRL against one another in a court of law. The State Department of Housing & Community Development (HCD) does not have authority to enforce these Civil Code provisions. For example, a park owner, not the state, must utilize an unlawful detainer procedure in a court to evict a homeowner for non-payment of rent or failure to abide by reasonable park rules. By the same token, a homeowner in a park, not the state, must sue the park in court to enforce a notice or other MRL requirement, or obtain an injunction, if the management will not otherwise abide by the MRL. (Source 2007 Mobile Home Residency Law handbook, Senate Select Committee on Mobile and Manufactured Homes).

#### Common Issues

##### Change of Terms

Amendments to the rules and regulations of the park must have tenant participation, with notice to every owner at least 10 days before a meeting on new regulations. New regulations can be implemented immediately after the meeting for those who consent. For those who do not consent, the new regulations take effect in not less than six

months upon written notice. Regulations governing recreational facilities can take effect upon written notice in not less than 60 days and do not need the homeowner's consent.

The management shall give a homeowner written notice of any increase in his/her rent at least 90 days before the date of the increase

### **Fees**

A homeowner shall not be charged a fee for other than rent, utilities, and incidental reasonable charges for services actually rendered. A fee may be charged for a lease of more than one year if the fee is mutually agreed upon by both the homeowner and management. A fee for services actually rendered but not listed in the rental agreement require a sixty day written notice before the homeowner can be charged. The only permissible fees are rent, utilities, and incidental fees for services actually rendered.

Park managers are authorized to charge homeowner certain fees as follows:

- ✓ to reimburse management for the actual cost of removing personal property, not including the mobile home and accessories, in violation of park rules, from the homeowner's site where, after reasonable notice, the homeowner has refused to do so; and
- ✓ to recover from the homeowner the cost of a title search on a mobile home for purposes of notifying parties with a legal interest in the home of a termination of tenancy, where the management obtains a court judgment against the homeowner.

### **Guests**

A homeowner shall not be charged a fee for a guest who does not stay with him or her for more than a total of 20 consecutive days or a total of 30 days in a calendar year; a homeowner who is living alone and who wishes to share his or her mobile home with one person may do so and a fee shall not be imposed.

### **Park Right of First Refusal to Buy Homes**

Any rental agreements entered into in 2006 and thereafter are prohibited from including a provision or clause giving the park management the right of first refusal to buy a homeowner's mobile home offered for sale in the park to a third party.

Any agreement entered into prior to 2006 may require homeowners to provide the park with the right of first refusal to purchase the homes when homeowners resell them in the park, by including such clauses in park rental agreements or leases that are required for homeowners to sign in order to live in the park.

### **Rental Agreement**

Although many of the laws discussed throughout this book cover the mobile home parks, there are some differences between the mobile homeowner, who rents space in a park versus a renter who rents a home. A rental agreement shall be in writing and shall contain, in addition to the provisions otherwise required by law to be included, all of the following:

- ✓ The term of the tenancy and the rent therefore,
- ✓ The rules and regulations of the park,
- ✓ A copy of the text of this chapter shall be attached as an exhibit and shall be incorporated into the rental agreement by reference. Management shall provide all homeowners with a copy of the chapter prior to February 1 of each year, if a significant change was made in the chapter by legislation enacted in the prior year,
- ✓ A provision specifying that:
  - ✓ it is the responsibility of the management to provide and maintain physical improvements in the common facilities in good work order and condition, and
  - ✓ the description of process when there is a sudden or unforeseeable breakdown or deterioration of these improvements and the reasonable time for correcting the situation(s),
- ✓ A description of the physical improvements to be provided the homeowner during his or her tenancy,
- ✓ A provision listing those services which will be provided at the time the rental agreement is executed and will continue to be offered for the term of tenancy and the fees, if any, to be charged for those services,
- ✓ A provision stating that management may charge a reasonable fee for services relating to the maintenance of the land and premises upon which a mobile home is situated in the event the homeowner fails to maintain such land or premises in accordance with the rules and regulations of the park after written notification to the homeowner and the failure of the homeowner to comply within 14 days. The written notice shall state the specific condition to be corrected and an estimate of charges to be imposed by management if the services are performed by management or its agent.
- ✓ All other provisions governing the tenancy.

### **Right of Entry**

The ownership or management shall have no right of entry to a mobile home without the prior written consent of the resident. The consent may be revoked in writing by the resident at any time. The ownership or management shall have a right of entry upon the land upon which a mobile home is situated for maintenance of utilities, trees, and driveways, for maintenance of the premises in accordance with the rules and regulations of the subdivision, cooperative, or condominium for mobile homes, or resident-owned mobile home park when the homeowner or resident fails to so maintain the premises, and protection of the subdivision, cooperative, or condominium, or mobile homes, or resident-owned mobile home park at any reasonable time, but not in a manner or at a time that interfere with the resident's quiet enjoyment.

The ownership or management may enter a mobile home without the prior written consent of the resident in case of an emergency or when the resident has abandoned the mobile home.

### **Termination of Tenancy**

Tenancy at a mobile home park can be terminated with 60 days' notice and good cause. Good cause includes illegal activity, excessive noise, and felony convictions unless the convicted individual moves out. For nonpayment of rent, the landlord must give a five-day grace period, and then can give a Three-Day Notice to Pay or Quit.

No act or omission of the homeowner or resident shall constitute a failure to comply with a reasonable rule or regulation unless and until the management has given the homeowner written notice of the alleged rule or regulation violation and the homeowner or resident has failed to adhere to the rule or regulation within seven days. A cause for termination would occur if the homeowner or resident has received three written notices of the alleged violation of the same rule or regulation on three or more occasions within a 12 month period after the homeowner or resident has violated that rule or regulation.

### **Fair Housing Considerations In General**

In California, the Mobile Home Residency Law (MRL) governs the general management practices and policies of all mobile home parks, but only addresses a limited number of fair housing issues. Fair housing laws apply to all housing providers, including mobile home parks, and in most cases provide broader protections than the MRL.

### **Caregivers**

The MRL specifically allows any homeowner 55 years of age or older to share their mobile home with any person over the age of 18 if that person is providing live-in health care or live-in supportive care to the homeowner pursuant to a written treatment plan prepared by the homeowner's physician. The caregiver has no rights of tenancy in the park and cannot be charged a fee by park management, but is required to comply with park rules and regulations.

*Fair housing laws provide broader rights by requiring park management to allow any homeowner or resident with a disability, regardless of age, to have a live-in caregiver so long as there is a direct nexus between the homeowner or resident's disability and the need for the caregiver. This can be verified from a doctor or other medical professional.*

### **Pool Rules**

In all-age parks fair housing laws make it illegal to discriminate against families with children. Enforcing policies that only affect members of a protected class, such as families with children, is a form of discrimination. A rule or policy that limits the hours or use of the pool would have to apply to all residents

### **Senior Parks**

The management may require that a prospective purchaser comply with any rule or regulation limiting residency based on age requirements for housing for older persons, provided that the rule or regulations complies with the federal Fair Housing Amendments Act as amended by Public Law 104-76 and implementing regulations. Please refer to Mobile home Residency Law 708.76 'Senior Only Restrictions'.

A senior homeowner may share his or her mobile home with any person over 18 years of age if that person is providing live-in health care or live-in supportive care to the homeowner pursuant to a written treatment plan prepared by the homeowner's physician, a fee shall not be charged; a senior homeowner who resides in a mobile home park that has implemented rules or regulations limiting residency based on age requirements for housing for older persons may share his or her mobile home with any person over 18 years of age if this person is a parent, sibling, child, or grandchild of the senior homeowner and requires live-in health care, live-in supportive

care, or supervision pursuant to a written treatment plan prepared by a physician an surgeon, management cannot charge a fee for this person. Guests shall comply with the provisions of the rules and regulations of the mobile home park.

### **Service and Companion Animals**

The MRL states that no lease agreement entered into, modified, or renewed on or after January 1, 2001, shall prohibit a homeowner from keeping at least one pet within the park, subject to reasonable rules and regulations of the park. A homeowner shall not be charged a fee for keeping a pet in the park unless the management actually provides special facilities or services for pets.

*Fair housing laws require park management to allow any resident with a disability to keep a service or companion animal if there is a direct nexus between the disability and the need for the animal. Because service and companion animals are not considered pets under fair housing laws, park management must allow the homeowner with a disability to keep both the pet and the service/companion animal. Furthermore, management cannot charge a deposit for the service/companion animal or apply any pet policy limiting the animal's weight or size. If the resident's disability or need for the animal is not obvious or known to management, then management may require the resident to provide verification, which could be, but is not limited, to a doctor's prescription or a letter from a psychologist. Management may not require a resident to provide a certificate or proof of training for a service or companion animal.*

## **SECTION NINE** **Miscellaneous**

### **Nuisance Notices And Hearings**

Neighborhood Nuisance Codes empower the Code Enforcement agencies to serve Notices to landlords when a nuisance exists on that landlord's property. These notices can name specific tenants who are the cause of the nuisance. The notice requires the landlord to stop the nuisance or face an administrative penalty in an amount not to exceed \$5,000.00. Tenants in the City of Sacramento, who are evicted as a result of such notices, can request an informal meeting with the Regional Human Rights/Fair Housing Commission.

For purposes of the Neighborhood Nuisance Code, a nuisance is:

- ✓ Illegal sale or use of controlled substances and other illegal drugs or substances injurious to health which creates a public nuisance as defined in CA Civil Code 3479 and 3480 and CA Health & Safety Code §11570.
- ✓ Frequent gathering, or coming and going of people who have intent to purchase or use controlled substances on the premises.
- ✓ The occurrence of prostitution, as defined in CA Penal Code Sections 11225 and 11230.
- ✓ The unlawful activities of a criminal street gang, as defined in CA Penal Code §186.22, §186.25 and CA Health and Safety Code §11570.
- ✓ The making or continuing, or causing to be made and continued, of any loud, unnecessary or unusual noise which disturbs the peace and quiet of the neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.
- ✓ The firing of gunshots or brandishing of weapons by residents or guests on the premises.

CA Civil Code 3485 & 3486 authorizes City attorneys and prosecutors to bring eviction proceedings in the name of the people against a tenant for unlawful activities regarding firearms, ammunition, and controlled substances in participating cities (includes Sacramento County and City of Sacramento)

### **Sacramento County Good Neighbor Hotline**

The Sacramento County Good Neighbor Policy was established to lessen problems or concerns for neighbors of Sacramento County owned, leased or contracted facilities. County facilities are identified clearly. Most County contractor sites will soon have signs or neighbors will receive notice of sites that provide County services. These signs or notices will include a phone number for the Site Contact.

Are you having problems with noise, traffic or litter relating to a Sacramento County facility in your neighborhood? Do you need to speak with someone about other concerns relating to a particular facility in your neighborhood? The Good Neighbor Hotline has a representative, who can assist you in resolving your issues, if the site contact is unable to do so. In the event the matter cannot be resolved between the neighbors and the site manager the Good Neighbor Hotline staff will assist with mediation services providing both parties agree to this dispute resolution method.

If you have a complaint and are not sure if the site is Sacramento County owned, leased, or contracted call the Good Neighbor Hotline at (916) 874-3486, Monday through Friday, 8:00 a.m. to 5:00 p.m.

**SECTION TEN**  
**Resources**

**Directory of Community Resources**

**Housing**

211 Sacramento.....	916-498-1000
Foreclosure Information (Neighbor Works).....	916-452-5356
HUD Advisory Line.....	800-982-5221
SHRA.....	916-440-1390
Sacramento Self Help Housing.....	916-341-0593
Transitional Living Community Services.....	916-441-0123

**Local Government**

**City of Citrus Heights**

Sacramento Metro Fire Department.....	916-859-4300
Code Enforcement.....	916-725-2845
Non-Emergency Police.....	916-727-5500

**City of Elk Grove**

Fire Department.....	916-685-9502
Community Enhancement Program.....	916-687-3023
Non-Emergency Police.....	916-714-5115

**City of Folsom**

Fire Department.....	916-984-2280
Code Enforcement.....	916-355-7229
Non-Emergency Police.....	916-355-7230

**City of Rancho Cordova**

Sacramento Metro Fire Department.....	916-859-4300
Neighborhood Services.....	916-851-8770
Non-Emergency Police.....	916-362-5115

**City of Sacramento**

Sacramento Metro Fire Department.....	916-859-4300
Housing and Dangerous Buildings.....	916-264-5011
Neighborhood Services.....	916-808-6789
Non-Emergency Police.....	916-264-5471

**City of West Sacramento**

Fire Department.....	916-617-4600
Code Enforcement.....	916-617-4925
Non-Emergency Police.....	916-617-4900

**County of Sacramento**

Sacramento Metro Fire Department.....	916-859-4300
Code Enforcement.....	916-874-6444
Environmental Health.....	916-875-8484
Non-Emergency Sheriff.....	916-874-5115

**Emergency Services**

Alcoholics Anonymous.....	916-454-1100
Bannon Shelter.....	916-443-4688
California Youth Crisis Line.....	1-800-843-5200

Info Line (General Information and Referral Agency).....	211
Loaves & Fishes.....	916-446-0874
Lutheran Social Services.....	916-453-2900
Narcotics Anonymous.....	1-800-600-4673
Resources for Independent Living.....	916-446-3074
Red Cross.....	916-993-7070
Red Cross (emergency and disaster only).....	1-800-733-2767
Sacramento Area Emergency Housing Center.....	916-454-2120
Sacramento County Department of Human Assistance (Welfare).....	916-874-2072
Sacramento Housing & Redevelopment Agency (Housing Choice Voucher Applications).....	916-492-2244
Sacramento Housing & Redevelopment Agency (Housing Choice Voucher & Conventional).....	916-440-1300
Salvation Army.....	916-442-0331
Senior & Adult Services of Sacramento County.....	916-874-9598
Shelter Plus Care.....	916-874-4304
St. Vincent de Paul.....	916-972-1212
Suicide Prevention Hotline.....	1-800-273-8255
Volunteers of America.....	916-442-3691
Weave 24 Hour Crisis Center.....	916-920-2952
Wind Youth Center.....	916-443-8333

**Emergency Day Shelters/Hospitality Centers**

Friendship Park (Loaves & Fishes) 1321 North C at 12<sup>th</sup> Street  
Men & Women Drop-in 7a.m. to 2:30 p.m. - Monday – Friday

Maryhouse (Loaves & Fishes) (Homeless)..... 1321 North C Street at 12 <sup>th</sup> Street #32	916-446-4961
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Union Gospel Mission..... 400 Bannon Street	916-447-3268
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Wellspring Women's Center..... 3414 4 <sup>th</sup> Avenue	916-454-9688
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United Christian Center..... 110 6 <sup>th</sup> Street, West Sacramento	916-372-0200
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**Legal Services**

Disability Rights.....	916-488-9955
Lawyer Referral.....	916-564-6707
Legal Services of Northern California.....	916-551-2150
McGeorge Community Legal Services.....	916-340-6080
Small Claims Advisory Clinic.....	916-875-7846
Resources for Independent Living.....	916-446-3074
Voluntary Legal Services.....	916-551-2102

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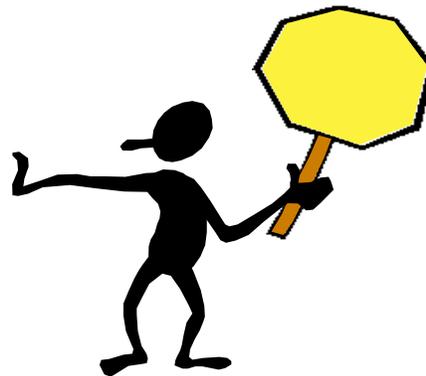
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## DISCRIMINATION IS AGAINST THE LAW

**At one time in our nation's history, racial, gender and other forms of discrimination were commonly accepted by most Americans as a fact of life.**

**Moreover, such discrimination was authorized by national, state and local governments. Today, almost every aspect of the multi-rental housing industry is governed by specific laws, usually laws dealing with property, contracts and individual rights. Yet today, there is still discrimination in the rental housing industry. This may be explained by the fact that laws do not necessarily change attitudes and practices.**

**The Solution to Fair Housing Is To Change the Way  
People Think and Act**



PLEASE VISIT OUR WEBSITE [www.hrfh.org](http://www.hrfh.org)

## **2012 Fair Housing Handbook**

### **Commonly Used Management Forms/Notices for Viewing and Printing**

3-Day Pay or Quit  
3- Day Notice to Quit  
3-Day Perform Covenant or Quit  
30-Day Notice of Termination of Tenancy  
60-Day Notice of Termination of Tenancy  
90-Day Notice of Termination of Tenancy  
Tenants Request for Service Notice of Entry by Owner/Agent  
Notice of Change of Rental Terms  
Tenant's Thirty Day Notice of Termination of Tenancy  
Notice of Belief of Abandonment  
Notice of Right to Reclaim Abandoned Property (less than \$300)  
Notice of Right to Reclaim Abandoned Property (more than \$300)  
Renters Insurance  
Move In/Move Out Inventory  
Disposition of Security Deposit

### **Educational/Informational Articles**

Abandonment of Pets  
Accessibility in Rental Housing  
Companion Animals  
Fair Housing Poster required by HUD  
Fixed Term Lease  
Foreclosure in Rental Housing  
Rental Housing and Children  
Retaliation  
Roommates  
Small Claims Court  
Smoking in Rental Properties  
Utility Billings

### **Available In Our Office Is A Smaller Version of the 2012 Fair Housing Handbook and the Following Brochures:**

Addressing Hate Crime....Affordable Housing Guide.....Assistance Animals as Reasonable Accommodation....County Good Neighbor Policy.....Equal Employment Commission.....Fire Resource Guide for Tenants & Landlords.....Holding Your Neighbors Accountable – Small Claims Court.....Mold.....Services Provided by the RHR/FH.....Small Claims Advisory Clinic.....Small Claims Mediation....Tenants in Foreclosure....New Owner of a Foreclosed Property....Unlawful Detainer Advisory Clinic....Unlawful Detainer Mediation

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