

## **30-DAY & 60-DAY NOTICES**

### **FREQUENTLY ASKED QUESTIONS & ANSWERS**



**NOTE:** If you get Section 8, live in government subsidized housing, or rent a space in a mobile home park, you have rights in addition to the ones detailed in this Handout. In these situations, the landlord might need a “good cause” reason to evict you. If you live in one of these types of housing, call our office for legal advice.

**THIS HANDOUT PROVIDES ONLY GENERAL LEGAL INFORMATION, IT IS NOT MEANT TO BE ADVICE FOR YOUR SPECIFIC LEGAL PROBLEM. IF YOU NEED LEGAL ADVICE, CONSULT AN ATTORNEY IF YOU ARE ABLE.**

**QUESTION: CAN MY LANDLORD EVICT ME WITH A 30-DAY NOTICE WITHOUT CAUSE?**

**ANSWER:** *Yes. If you or any of the other residents of the rental unit have lived there for less than one year, your landlord can end your tenancy by giving you a written 30-day notice. The landlord does not have to state a reason for ending the tenancy in this kind of notice.*

A landlord can also use a 30 day notice to end your tenancy if you have lived in the rental for more than a year in one *very limited* situation: A landlord can give a 30-day notice if your rental unit is a single-family residence (a house) or condominium, and the landlord is the property owner and is in escrow to sell the property.

*As of January 1, 2007, landlords seeking to end a tenancy must give the tenant a 60-day notice. This new law applies when all residents of the rental unit have lived in the unit for at least one year and the tenants are renting on a month-to-month basis, without a lease. You can find the new law at California Civil Code section 1946.1*

**In some situations, a landlord can give a 3-day notice to end a tenancy. This is different from a 30 or 60-day notice. If you get a 3-day notice, please contact our office and ask for a 3-day notice packet.**

**QUESTION: CAN MY LANDLORD EVICT ME WITH A 60-DAY NOTICE WITHOUT CAUSE?**

**Answer:** *Yes. A landlord can end a month-to-month tenancy simply by giving you 60 days' advance written notice without stating a reason. A month-to-month tenancy is a rental agreement that requires one rent payment a month. As of January 1, 2007, state law no longer allows landlords to give less than 60-day notice to tenants who have month-to-month tenancies and who have lived in the rental unit for at least one year.*

Your landlord does *not* need to give a reason, or to tell you why you are being evicted in the 60-day notice. Unfortunately, it does not matter if you are sick, have small children, have lost your job or are receiving government benefits.

The landlord can give you the 60-day notice at any point in the month, including right after you paid the rent. The 60 days start the day after you received the notice. You will need to pay the landlord rent up through the 60<sup>th</sup> day, unless you paid "Last Month's Rent" when you moved in. If you paid "Last Month's Rent" at move-in, then your last month is considered prepaid and you will only need

to pay rent for one of your remaining two months. To figure out how much you must pay for each day, divide your monthly rent by 30.

**QUESTION: DID MY LANDLORD GIVE ME THE 30-DAY OR 60-DAY NOTICE PROPERLY?**

**Answer:** The landlord must follow state law requirements when serving you with a 30-day or 60-day notice. Use the following checklist to decide whether your landlord gave you a proper notice, and whether you were served properly:

- Is the notice in writing?**
- Is the notice signed and dated by the owner or by a person allowed to act for the owner?**
- Does the written notice adequately describe the rental unit by including the address of the rental unit or enough of a description so that you can tell which unit it refers to?**
- Did you get the notice in any of the following ways?**
  1. \_\_\_ **By personal service at your home or work?** (This means the person serving the notice handed you the notice personally, or left it with you even after you refused to take it).
  2. \_\_\_ **By substituted service. (This means that the person serving the notice gave it to another person of “suitable age and discretion” at your home or work, and mailed a second copy to your home? A person of “suitable age” normally would be an adult at your home or work, or a teenaged member of your home).**
  3. \_\_\_ **By posting and mailing?** (“Posting and mailing” means the person serving the notice taped or tacked a copy to your door and also mailed a second copy to you at home).
  4. \_\_\_ **By certified or registered mail, with a return receipt requested?**
- Have you and all the other residents of the household been living in your rental unit for one year or longer?**
  - If so, did the landlord give you 60 days’ written notice?
  - If all of you have lived in the unit one year or longer, but got a 30 day written notice, is the landlord the property owner, and is he or she selling the property? If so, has an escrow been established for the sale?
- Do you have a written lease for a specific time period of more than one month?**
  - If so, has that lease run out yet?

If your answer to *any* of the checklist items was “NO”, then the landlord may have given you an invalid notice or may not have given you the notice in the proper way. If this is your case, you may be able to negotiate for more time to move. Contact Legal Services of Northern California at [\_\_\_\_\_] for more advice.

***IMPORTANT:*** *Even though the landlord may end your tenancy with a 30 or 60 day notice without giving a reason, this does not mean that the landlord can end your tenancy to get back at you (retaliate) for exercising or enforcing your rights as a tenant.* It is against the law for the landlord to do this. For example, did you complain about the conditions in your apartment that need repairs? If you did assert your rights in this way or other ways, and you feel the landlord has given you a notice to terminate as a direct result, you can argue that the landlord gave you the termination notice illegally. You may be able to negotiate with your landlord for more time; or, you may have a good defense if the landlord decides to file a court eviction case. If you feel your landlord is retaliating against you because you exercised your rights, contact Legal Services of Northern California for more advice.

*It is also illegal for your landlord to discriminate against you because of your race, religion, national origin, sex, marital status, age, sexual orientation, disability, the fact that you have children, or certain other arbitrary reasons.* In other words, your landlord cannot try to end your tenancy or evict you for any of these reasons. If you think your landlord is illegally discriminating against you, you should contact the U.S. Department of Housing and Urban Development's Fair Housing Hotline at (800) 669-9777 or contact the Department of Fair Employment and Housing at (800) 233-3212. You can also contact Legal Services for more advice.

**QUESTION: HOW DO I RESPOND TO A PROPER 30-DAY OR 60-DAY NOTICE?**

**ANSWER:** If you got a proper 30-day or 60-day notice but want to stay in the unit or want additional time to move, you will need to convince the landlord to withdraw or cancel the notice. If you want to continue living in the rental unit, ask the landlord what you need to do to make that possible.

You can try to find out why the landlord gave you the notice. If it is something that you can control (for example, your rent is always late), tell the landlord that you will not do this in the future. If you make an agreement with the landlord and the landlord agrees that you can stay in the rental unit, make sure that s/he cancels the 60-day notice in writing and that you keep a copy of the writing. Also, be sure to get your new agreement with the landlord in writing. The written agreement might be an attachment to your current lease or rental agreement signed by both you and your landlord. Having the agreement in writing ensures that you and your landlord are clear about your future relationship.

If the landlord does not agree to your staying, you must move out. You should do so by the end of the 30 or 60 days, depending on what type of notice you got. Take all of your personal belongings with you, and leave the rental property at least as clean as when you first rented it. If possible, tell your landlord that you have moved out, and go through the unit with the landlord to make sure there are no problems. This will help with the refund of your security deposit. **For more information, please ask for the Security Deposit Packet from our office.**

**QUESTION: WHAT IF I DON'T MOVE OUT BY THE TIME THE END OF THE NOTICE TIME?**

**ANSWER:** If you have not moved out at the end of the notice time (30 or 60 days), you will be considered occupying the rental unit against the law, and the landlord can file an unlawful detainer (eviction) lawsuit in court to evict you.

**NOTE:** Even if you do not move within the 30 or 60 days after you received the notice (depending on what type of notice you got), the landlord **cannot** throw you out on the street, change the locks, or have the sheriff or police evict you, without going to court first. The landlord must sue you in court if he or she wishes to evict you. **You should contact our office IMMEDIATELY if you receive the legal papers called a “Summons and Complaint for Unlawful Detainer.”**

**Remember that you are only entitled to a 60-day notice if you and all the other residents have lived in the rental unit for one year or more. If you or any of the other residents have lived in the unit for less than one year, then you are only entitled to a 30-day notice.**

Even if you have good legal defenses to an eviction based on a valid 30-day or 60-day notice, you might try to find a new home and move before the 30 or 60 days are up. If you move **before** the notice expires, you may not be sued in an eviction case, so there will **not** be a negative report on your credit, unless you owe rent or other damages. If you are sued and lose, you may have trouble finding a landlord who will rent to you in the future if you have an eviction on your record.

Even if you believe that the landlord has acted against the law in giving you the 30-day or 60-day notice, or that you have a defense to an eviction lawsuit, the landlord may go ahead and file an eviction lawsuit against you anyway. So, it is important to carefully look at the pros and cons of staying in your unit and challenging the landlord’s eviction lawsuit. Contact our office for help with making your decision.

To evict you, the owner must go to court. The suit against you is called an “unlawful detainer action,” and you can only be sued for an unlawful detainer if you did not vacate the rental unit before your 30 days or 60 days in the notice were up.

### **QUESTION: WHAT HAPPENS IF MY LANDLORD SUES ME FOR EVICTION?**

**Answer:** If your 30-day or 60-day notice is up and you are still in your unit, the landlord will probably sue you in court to evict you. If this happens, you will get legal papers called a “Summons” and a “Complaint.”

Make a note of what day you got the Summons and Complaint. You have five days from the day you receive the papers to file your response. To count the five days: Start counting with the day **after** you received the papers. You must count Saturdays and Sundays, but do not count court holidays. If the fifth day falls on a Saturday, Sunday or holiday, you will have until the end of the next court business day to file your “Answer” to the Summons and Complaint.

Example: Jane gets the Summons and Complaint papers on a Monday. Tuesday is the first day of the 5 days. The 5<sup>th</sup> day would be a Saturday. Jane has until the next business day, Monday, to file her papers. If Monday is a holiday, Jane has until Tuesday.

Within those five days, you can file a written response to the landlord's summons and complaint. You must use the right legal form and file it at the court where the lawsuit was filed. This form is called an "Answer." If you are low-income and file a separate form called an "Application for Waiver of Court Fees and Costs," you will probably not need to pay the court filing fees. You can get both the Answer and the Fee Waiver forms either at the court clerk's office or at our office.

**ALERT!**

If you have received a "Summons and Complaint for Unlawful Detainer" (an "eviction lawsuit"), **please contact our office immediately!**

**Do NOT wait until the fifth day to call!!** If you wait until then, we may not be able to help you.

If you are low-income and qualify for our services, we can give you free legal advice to help you file your required response.

When you fill out the Answer, you put down any legal defenses to the eviction. After you file the Answer, you will receive a "Memorandum to Set Case for Trial" and a notice of the trial date by mail. Generally, the trial must be within 20 days of when the landlord files the "Memorandum to Set Case for Trial." You must get notice from the clerk about when the trial will be at least ten (10) days before the trial. When your court date comes up, plan to arrive early at the courthouse so that you can find parking, get through the security check, and find the courtroom. **If you are late and the judge has already called your case, you will lose your case.**

**QUESTION: WHAT IF I IGNORE THE SUMMONS AND COMPLAINT AND DO NOTHING?**

**ANSWER:** After the five days are up, if you have not filed an Answer to challenge the eviction, the landlord can ask the court clerk for a "default judgment." If this happens, you will NOT go before a judge. This means that the landlord automatically wins the case and gets the property back from you.

Sometimes the court will allow you to "re-open" the case after entering a "default judgment" if you have a good reason for not filing the Answer on time. If this happens to you, contact our office for a Default Eviction Packet.

**NOTE: You should not assume that the court will allow you to "re-open" your case.** In many cases, the tenant's request to is denied. Therefore, you must try to file your Answer within the 5 days so that you do not lose your case by missing a legal deadline.

**QUESTION: WHAT HAPPENS AFTER LOSING IN COURT OR AFTER A JUDGMENT AGAINST ME?**

**ANSWER:** If the landlord wins or gets a default judgment, the landlord gets a form called a “Writ of Possession.” The landlord takes this writ to the Sheriff’s Department who will then bring to you (or post on your door) a “Notice to Vacate.” The vacate notice will give you at least five days before the officer will come back to evict you. The Notice to Vacate will tell you exactly what date and time you must be out of the house or apartment. **Even if you are not completely moved out, the sheriff can prevent you from re-entering the house after the time and date of the notice.** You must get your belongings out before the officer comes to evict you. If this is impossible, at least remove your important papers, medications, valuables, and clothing. If you leave belongings behind, you can claim them within 15 days of the eviction, but you will have to **pay the storage and removal costs**. However, the landlord **cannot** require you to pay back rent, attorney’s fees or court costs to get back your belongings.

**QUESTION: HOW LONG DOES THE EVICTION PROCESS TAKE?**

**ANSWER:** If you do not file an Answer, the sheriff may be out to evict you as soon as 11 days after you receive the Summons and Complaint. If you file an Answer to the lawsuit, the process will take a little longer. Do not expect the entire process to take more than one month – it could take even less than one month. Contrary to some popular belief, you can be evicted if even if you are pregnant, have small children, have an unexpected financial hardship (like losing your job), if you’ve never been late with the rent before or if you have nowhere else to move.

For more information about the eviction process, you should check the local public library or a bookstore for Tenant’s Rights by Myron Moskowitz and Ralph Warner (Nolo Press).