



PREVENTIVE LAW SERIES

EVICITION



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CAN IT HAPPEN TO YOU?

Picture this...you've been a great tenant, you always pay your rent on time and you're always courteous to your landlord and neighbors. For reasons beyond your control, you find yourself in a financial jam one month. Your rent is going to be a few days late. No big deal, right? Be careful – being late in your rent could result in a costly eviction process.

When you fail to pay your rent on time, your landlord can give you what is called a three-day notice to pay or quit. This means you have the option of paying your rent within three days or moving out of your apartment. If you don't remedy the situation within three days, (i.e. pay or move out), the landlord can file an unlawful detainer (eviction) lawsuit with the court. If you try to pay your rent after the three-day period has expired, the landlord has the right to refuse your payment and continue with the eviction process.

If the landlord decides to file an unlawful detainer action, you will be given service of process (notice) of the proceedings. You will then be given the opportunity to file an Answer (explanation of your side of the story) with the court. It is important to note that you have only five days to file this answer with the court.

The "Answer" discussed above is drafted on forms supplied by the court. Legal Assistance attorneys can assist you in filling out these forms. After you file your answer with the court, the case is set for trial. Sometimes it is possible to settle the matter with the landlord instead of going to trial. You should be prepared for all possibilities, including paying your rent that is due in full, paying the costs of the eviction lawsuit and possibly paying the fees for the landlord's attorney.

YOUR RIGHTS AS A SERVICE MEMBER

The Servicemembers Civil Relief Act (SCRA) may provide some protection for service members and their dependents faced with a possible eviction. Under the SCRA, a landlord may not evict a service member or his or her dependents without a court order. It is possible to receive a "stay" (delay) of the eviction for ninety days or an adjustment of the rent if the ability of the service member to pay the rent is materially affected by military service. 50 U.S.C. § 521, Even if a stay is granted, the judge may give the landlord equitable relief until the matter is resolved.

If you move out, whether by choice or by eviction, you may still be responsible for paying the landlord money owed under the lease agreement. If a court rules against you and you are evicted, not only are you forced to move and find a new apartment, but also the ruling may (and probably will) be reflected on your credit report. This may negatively affect your ability to rent in the future.

Clearly, being a few days late in paying your rent can result in a huge headache and a lot of extra expenses for an already tight budget!

MONTH-TO-MONTH LEASES AND FORECLOSURES IN CALIFORNIA

What about your rights and your landlord's rights in a month-to-month lease? Generally, if you have a month-to-month rental agreement, your landlord can end your tenancy after giving you a 30-day notice to vacate, in writing. You may have done nothing wrong, but the landlord has the privilege to terminate the lease after giving you a 30-day notice in writing so long as it is not based on retaliation or discrimination. However, one exception to this rule that may apply to you is if you have lived in your apartment for more than two years. Under these circumstances, the landlord must give you a 60-day notice in writing to end the lease.

What about your rights and your landlord's rights if your landlord is foreclosed upon? If your landlord is going into foreclosure, the first notice that most tenants have is a "Notice of Trustee Sale" which is posted at the property. The

property will be sold at auction or the lender may simply take possession of the property. If the lender takes possession of the building, this process can take from four months to a year, depending on how quickly your landlord's lender moves.

If the residence is getting foreclosed, and you have a month-to-month rental agreement, send your landlord a letter stating that you'll be moving within 30 days. If you have a lease, you'll have to negotiate with your landlord to leave early, and there's not much you can do if he or she won't let you out of the lease. The fact that he or she is in default doesn't cancel the lease or your responsibility to pay the rent. Only the foreclosure sale does that.

State law allows the new owner or the lender to evict almost all tenants by serving them with a 30-days' notice to vacate the property. This applies even if you have lived in the house for over a year. Lenders generally don't want to become landlords and will usually force any tenants to vacate the building promptly.

Some lenders will offer you money if you'll move within a couple of weeks and leave the building unharmed. It is essential that you get any "cash for keys" agreement with the lender **IN WRITING**. Be sure that any agreement is signed by an authorized bank officer. A legal assistance attorney can help you.

It's possible that you can negotiate with the lender for more time, particularly if you only need a week or two. If you can't negotiate with the lender, you must move by the time the 30 days is up. If you don't move, the landlord can file an unlawful detainer and ask the court to evict you.

The person or company that owns your building must return your security deposit to you. On sale of the building, whether an ordinary sale or a foreclosure sale, your security deposit must either be transferred to the new owner or returned to you. And it's the responsibility of the new owner to collect the security deposit from your former landlord. If it's not returned to you within three weeks after you move, you can sue the lender in Small Claims Court, just as you would any landlord, to recover the money.

LEGAL ASSISTANCE SERVICES

A legal assistance attorney is available by appointment Monday through Thursday from 0800 - 1030 and 1300 - 1500, and Friday from 0900 - 1100. Powers of attorney and notaries are available Monday through Friday at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island – Coronado, Building 318 – Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

RESOURCES

California Department of Consumer Affairs: 1625 N. Market Blvd., Sacramento, CA 95834; (800) 952-5210; www.dca.ca.gov.

California Tenants: A Guide to Residential Tenants' and Landlords' Rights and Responsibilities (2012 ed.), www.dca.ca.gov/publications/landlordbook/catenant.pdf.

Servicemembers Civil Relief Act (SCRA). 50 App'x U.S.C. §§ 501 et seq. (2012).