

LUCAS REAL ESTATE

REAL ESTATE LAW | TRANSACTIONS | BROKERAGE | REALTOR®

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Landlord-Tenant 101 *EXPRESS for REALTORS®**

***By NO MEANS a comprehensive guide – See Disclaimer
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Intro

Whether acting as a property manager, giving a client advice, managing your own investment property, or dealing with your own landlord, REALTORS® are frequently involved in landlord-tenant matters. California laws are extremely harsh on landlords and overly tenant friendly. I's must be dotted, and T's must be crossed. Sacramento is constantly trying to figure out ways to squeeze property owners, and landlord-tenant laws are among the sneakiest ways they chip away at ownership rights. Here are some key issues for landlords, tenants, and REALTORS® involved in rentals to keep in mind. This is by no means a comprehensive guide, but an overview of frequent issues that cause problems (and lawsuits).

1) Pre-Move In

A. Landlord Prep:

- i. Prep unit, including ensuring compliance with CO2 and smoke alarms requirements, clean property, photos, etc.
 - a. See C.A.R. publication, "Smoke Alarm Requirements" for current landlord requirements; See also C.A.R. Legal Q&A, "Landlord-Tenant Guide for REALTORS®," question 28 (i.e. smoke alarm in each bedroom, the hallway outside the bedroom, and each floor; CO2 outside of each sleeping area; but Cal Fire recommends that a CO device be installed in each sleeping room.)

A note on **commercial leases**: Tenants take caution – CA law provides far less protections in commercial, presuming both parties are businesses with access to professional guidance, including legal counsel.

- ii. Check/increase insurance - Insurance is the first line of defense! You cannot have too much insurance on a rental property.
 - iii. Other forms of asset protection should be considered, such as holding the property in an LLC (typically not an option if there is a loan on the property; thus another reason to ensure adequate insurance). High net-worth individuals, and others, will want to explore additional asset protection strategies, such as foreign trusts.
- B. Locate unit / locate tenants
- i. Signs, craigslist, use of REALTOR®, MLS, etc.
- C. Background checks, referrals (tenants, be prepared to submit; landlords, check!)
- i. Use of third-party websites such as My Smart Move, e-renter, etc., allows tenant to submit (and pay) directly to third-party and report comes to you via email.
 - ii. If reject based upon credit, LL must provide written notice to a prospective tenant. (California Civil Code § 1785.20; See also C.A.R. Legal Q&A, “Rejection Notice to Tenants Based on a Consumer Credit Report.”)
- D. Lease - Negotiate terms; Draft; Sign.
- i. While a lease can be oral if under a year term (and some other exceptions), that’s not advised. Both landlords and tenants should have a written agreement, even if just a month-to-month tenancy.
 - ii. Tenants and Landlords - **Read the lease!** Terms not in the lease (even if made orally), may not be part of the deal (duration, parking, storage, pets, keys, no smoking, pool access, etc., etc.)
 - iii. Key terms to include:
 - a. Identify Parties (who is landlord? – Property owner, property manager, etc.; if PM, ensure proper PM Agreement (i.e. C.A.R. form PMA) is signed by the owner that expressly grants authorization to sign leases).
 - b. All adults over 18 should be on the lease.
 - c. Property description (including any parking, storage, etc.), ensure to detail what is, and what is not, included.
 - d. Duration (month-to-month, year, etc.).
 - e. Amount of rent
 - f. Time and method of payment
 - i. Note – LL must allow a tenant to pay rent and deposit of security by at least one form of payment that is neither cash nor electronic funds transfer, even if agreed to otherwise in the lease (except following a tenant's failure to pay rent where the tenant bounced a check or stopped payment on a check, in which case, LL can demand cash for at most three months). The law also provides that a waiver of these provisions is contrary to public policy, void, and unenforceable. (California Civil Code § 1947.3.)
 - ii. Note on late fees – complicated and generally ill advised; cannot be an arbitrary penalty, must reflect a "reasonable endeavor to estimate a fair compensation" for tenant's default. (See C.A.R. Legal Q&A, “Landlord-Tenant Guide for REALTORS®,” question 22; California Civil Code § 1671(c) – (d).)
 - g. Security deposit
 - i. Note on caps: 2x cap if unfurnished; 3x cap if furnished. Creative ways to word deposits, such as “pet deposit,” “key deposit,” “last month’s rent,” etc.,

ALL count towards these caps. (California Civil Code § 1950.5(c).) Minor exception for waterbeds. Okay to pre-pay rent if more than six months.

ii. Refunds discussed below; see also C.A.R. Legal Q&A, “Security Deposits.”

iv. NOTES

- a. Note on getting creative – consult with legal counsel. California Law will void provisions against public policy, such as “non refundable” deposits, set cleaning fees, LL access (beyond what is statutorily allowed), liability limitations, notice provisions, etc., etc., and likely backfire against your landlord and the lease drafter. (California Civil Code § 1953.)
 - b. Fair Housing Laws –. (See C.A.R. Legal Q&A, “Landlord-Tenant Guide for REALTORS®”, question 7, for more details; See Also - C.A.R. Legal Q&A, “American With Disabilities Act (ADA).”)
 - c. Pets. Can ban pets; However, cannot ban “service animals.”
 - i. California and federal law require a landlord to reasonably accommodate a tenant’s disability, which is broadly defined. (See - 42 U.S.C. § 3604(f)(3)(B), California Government Code § 12927).
 - ii. Moreover, asking the nature of the disability is not allowed, while asking for written verification that a disability exists and that a support animal is needed (i.e. from a doctor, but without disclosing specifics) is allowed.
 - iii. If a tenant requests to keep a service animal or support animal because it is necessary for the disabled tenant to have the equal opportunity to use and enjoy the rental, and it is a *reasonable accommodation* of the tenant’s disability, the owner would have to allow the tenant to keep the animal.
 - iv. What is a “Reasonable accommodation” will undoubtedly be tested in the Courts as this new “service animal” law progresses.
 - v. C.A.R. Form, “Pet Addendum” (PA)
 - vi. See C.A.R. Legal Q&A, “Landlord-Tenant Law: Pets and Service and Support Animals.”
 - vii. Note – insurance issues will be tested as this law progresses (i.e. insurance may not cover a Pitbull, but CA law mandates the LL allow it).
 - d. See Civil Code section 1632 regarding negotiation/translation into Spanish, Chinese, Tagalog, Vietnamese, or Korean.
 - e. For further guidelines on drafting a written lease or rental agreement, please refer to the C.A.R. Legal Q&A, “C.A.R.’s Lease Listing and Residential Lease or Month to Month Rental Agreement.”
 - v. Landlords – DON’T download some junk off the Internet and DON’T DIY; spend the time/money to get a proper lease or have one drafted for you.
 - vi. Landlord – attorney’s fees provision??? (note – rumored pending LR form change).
- E. Disclosures???
- AD, HOA (give rules, CC&Rs, etc.), mold, pool, lead paint (pamphlet, not just FLD), etc. See C.A.R., “Legal Chart, Lease/Rental Disclosure Chart for REALTORS®.”
- 2) **Move In** - Walk-Through / Document move-in conditions (photos, formal move-in inspection reports, send an email, etc.)
- 3) **Tenancy - Complaints / Repairs**
- A. Remember, this is now the tenant’s home. Tenants can expect to enjoy exclusive possession of the premises, undisturbed by the landlord during the entire rental period. (California Civil Code § 1927.)

- B. Habitability. Watertight and sanitary (free of debris, filth, rubbish, garbage, rodents, and vermin); equipped with functioning and locking doors and windows; running hot and cold water, plumbing, gas and/or electrical systems; heating in good working order; one usable phone jack; garbage receptacles; and floors, stairways, and railings maintained in good repair. (California Civil Code § 1941.1 – 1941.4.)
- C. Tenants - make requests **in writing**, keep documents.
- i. *Note* - Effect of tenant habitability complaints – six (6) month presumption of retaliatory eviction for any attempted eviction (other than non-payment of rent), rent increase or decrease in services. (California Civil Code § 1942.5(a).) Similar protections for involvement in any tenant’s rights organizing. (California Civil Code § 1942.5(c).)
- D. Landlords –
- i. Respond promptly, keep documents and records. Logs/Diaries.
- ii. Landlord Access - The rights of a landlord to enter a dwelling are severely limited by statute (which always supersedes the lease).
- a. A landlord may enter only under the following circumstances (no such thing as a “check up”, any other basis for entry is likely void):
- i. In case of emergency;
- ii. To make necessary or agreed-upon repairs, decorations, alterations or improvements, supply necessary or agreed-upon services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors or to make a pre-move-out inspection;
- iii. When the tenant has abandoned or surrendered the premises;
- iv. Pursuant to court order; or,
- v. For the purpose of installing, repairing, testing, and maintaining single station smoke alarms. (California Civil Code § 1954(a); See Also – California Health and Safety Code §13113.7.)
- b. Notice
- i. “Reasonable notice” is required (absent consent, emergency repairs or abandonment) which is presumed to be 24-hours if personally delivered, or six (6) days if sent by mail. Notice must include the date, approximate time and purpose of the entry. (California Civil Code § 1954, et. seq.).
- ii. Absent consent, emergency repairs or abandonment (or an open house, discussed below), the landlord can enter only during “normal business hours” unless the tenant consents otherwise. (California Civil Code § 1954(b).) There is no statutory definition for “normal business hours,” – play it safe, stick to typical bank-type hours absent agreement otherwise.
- iii. To Show the Unit
- i. If for sale, send C.A.R. Form “Notice of Sale and Entry” (NSE)
- ii. Upon the same, for the next 120 days, the notice may be given orally, in person or by telephone. (California Civil Code § 1954(d)(2).) As with written notice, oral notice should be given at least 24 hours advance to be presumed reasonable. At the time of entering the unit, the landlord or agent must leave written evidence of the entry inside the unit (e.g., a business card) (California Civil Code § 1954(d)(2).)
- iv. Open Houses. The law permits the landlord to hold open houses on weekends with reasonable notice. This was the ruling in the case of Dromy v. Lukovsky

(2013) 219 Cal.App.4th 278, which set down the guidelines for holding open houses. The case allowed that open houses could be held on either Saturday or Sunday, but should be limited two a month. The tenant should be given 10 days' notice, and the tenant should have the right to propose alternative days for the open house. (See C.A.R. article, "Entering Tenant-Occupied Property" from the 2015 June/July edition of California Real Estate Magazine, www.onlinedigitalpubs.com/publication/?i=261353.)

4) **Termination of Tenancy**

A. With a lease:

- i. By expiration of lease;
 - a. Tip - Give a friendly notice/reminder anyways to avoid confusion. C.A.R. Sample Letter "Lease Expiration Letter"
 - b. Note - Accepting rent after expiration creates a month-to-month tenancy. (California Civil Code § 1945.)
- ii. By Abandonment. See C.A.R. Legal Q&A, "Landlord-Tenant Guide for REALTORS®," question 48; California Civil Code § 1951.3, et. seq.),
- iii. By Breach of Lease (i.e. non-payment of rent or by other actions or failures to act)
 - a. Warning – CA laws favor the tenant; thus, absent non-payment of rent, drug arrests or some other clear-cut basis, LL needs substantial grounds and supporting evidence to evict based on alleged breach / non-compliance issues. Absent the same, LL risks not just losing eviction hearing (and possible fee awards), but claims of retaliatory eviction, constructive eviction, harassment, etc., etc. Legal counsel should be involved at this stage.
- b. Via 3-day Notice of Pay Rent or Quit
 - i. C.A.R. form PRQ
 - ii. Service Issues, below
 - iii. Must accept rent in 3-day timeframe
 - iv. Do NOT include "late fees"
- c. Via 3-day Notice to Perform Covenant (Cure) or Quit
 - i. C.A.R. form PCQ
 - ii. Service Issues, below
- d. Via 3-day Notice to Quit
 - i. C.A.R. form NTQ
 - ii. Service Issues, below
- e. Service Requirements for 3-day notices are strict / use a registered process server or presumption is that service was not valid. (California Civil Code § 1162; California Evidence Code § 647; California Government Code §§26662, 71265; Palm Prop. Invs., LLC v Yadegar (2011) 194 CA4th 1419, 1427.)
- f. Issues re: debt collection. Watch out – if you do this regularly, you may be deemed a debt collector. Always best to have LL sign the notices and use registered process servers to serve.

B. Without a lease and/or in month-to-month tenancy:

- i. By 30-days notice if tenancy less than one year. (California Civil Code § 1946.1(c)).
- ii. By 60-days notice of tenancy over one year. (California Civil Code § 1946.1(a)-(b)).
 - a. Note - tenant is only required to provide 30-days notice regardless; only the landlord must provide 60-days notice if tenancy has been over a year.

- iii. By 30-days notice if by sale to a purchaser who's going to occupy the property for at least a full year, regardless of duration of tenancy, with some other exceptions/requirements. (California Civil Code § 1946.1(d).)
 - iv. Service of such notices okay via Certified Mail. (California Civil Code § 1946.1(f)).
 - v. C.A.R. standard form NTT, "Notice of Termination of Tenancy".
 - C. Via foreclosure – requires 90-days notice and other requirements. See an eviction attorney; C.A.R. Legal Q&A, "Foreclosing on Rental Property"; C.A.R. Legal Q&A, "Landlord-Tenant Guide for REALTORS®" question 44.
- 5) **Pre-Move-out**
- A. 30-days before move-out or lease termination...
 - i. Landlords – send tenant notice re: right to move-out inspection. C.A.R. Form "Notice Right to Inspection Prior to Termination of Tenancy" (NRI).
 - ii. Discuss if staying (if so, new lease or month-to-month), going, etc. Make sure landlord and tenant are on same page.
 - iii. If moving out - Schedule move-out inspection (optional for tenant; mandatory for landlord to offer)
 - B. Conduct move-out inspection (if tenant opts) - document findings
 - i. Landlord must provide estimates in writing and deliver to tenant on the spot, or if tenant not present, leave in unit.
 - ii. C.A.R. Form "Pre-Move-Out Inspection Statement" (PMOI).
 - iii. See California Civil Code section 1950.5; C.A.R. Legal Q&A, "Landlord-Tenant Guide for REALTORS®," question 15, for additional details.
 - C. Tenant to Clean / Perform Repairs as needed
- 6) **Move-Out**. Tenants – take photos, document move-out. Turn over keys, remotes, etc.
- 7) **Security Deposit Refunds** (California Civil Code § 1950.5.)
- A. Landlord – **21-days after move out** (postmark date, first-class mail) landlord **MUST** supply itemization and documentation of deductions and refund any remaining deposit. (Id. at (g)(1).)
 - i. Do not email it (even if the lease "allows" for that, it doesn't), send via first-class mail. Only okay to email if tenant authorizes email after the termination of the tenancy. (Id.)
 - ii. No forwarding address? "If the tenant does not provide an address, mailings pursuant to this subdivision shall be sent to the unit that has been vacated." (Id. at (g)(6).)
 - B. Standards
 - i. See Lease. ("ordinary wear and tear"???)
 - ii. "The repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant." (Id. at (b)(2).)
 - iii. For all tenancies beginning after January 1, 2003, only the cleaning cost "necessary to return the unit to the same level of cleanliness it was in at inception of the tenancy." (Id. at (b)(3).)
 - C. The itemized statement must be accompanied by receipts or invoices for anything over \$125 (tip – provide all receipts and invoices, regardless of amount):
 - i. If the landlord or landlord's employee did the work, the itemized statement shall reasonably describe the work performed. The itemized statement shall include the time spent and the reasonable hourly rate charged. (Id. at (g)(2)(A).)

- ii. If the landlord or landlord's employee did not do the work, the landlord shall provide the tenant a copy of the bill, invoice, or receipt supplied by the person or entity performing the work. The itemized statement shall provide the tenant with the name, address, and telephone number of the person or entity, if the bill, invoice, or receipt does not include that information. (Id. at (g)(2)(B).)
 - iii. If a deduction is made for materials or supplies, the landlord shall provide a copy of the bill, invoice, or receipt. If a particular material or supply item is purchased by the landlord on an ongoing basis, the landlord may document the cost of the item by providing a copy of a bill, invoice, receipt, vendor price list, or other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit. (Id. at (g)(2)(C).)
- D. Can't comply within 21-days? That's okay...
- i. "... the landlord may deduct the amount of a good faith estimate of the charges that will be incurred and provide that estimate with the itemized statement." (Id. at (g)(3).)
 - ii. If the reason for the estimate is because the documents from a person or entity providing services, materials, or supplies are not in the landlord's possession, the itemized statement shall include the name, address, and telephone number of the person or entity. (Id.)
 - iii. Within 14 calendar days of completing the repair or receiving the documentation, the landlord shall complete the requirements above. (Id.)
- E. Sorry landlords, no DIY repairs (you can; you just can't charge the tenants for your own labor).
- F. The return of the security deposit is by far the most common dispute in landlord-tenant matters.
- G. If you plan to deduct from the security, make sure the charges are valid, provide supporting documents, receipts, and get it postmarked within 21-days of move-out.
- H. C.A.R. Sample Letter "Security Deposit Return."
- I. Consequences:
- i. Lawsuits.
 - ii. Attorney's fees.
 - iii. Statutory penalties of up to two times the deposit for bad faith retention by landlord. (Id. at (i).)
 - iv. Burden of proof is on landlord at trial. (Id.)
- 8) **Evictions**
- A. No self-help / lockouts / turning off utilities, etc. (Id. at 789.3.)
 - i. Automatic penalties (\$100 per day), attorney's fees, injunction, etc.
 - B. Consult an experienced eviction attorney.
- 9) **Abandoned Personal Property** – See C.A.R. Legal Q&A, "Landlord-Tenant Guide for REALTORS®," questions 47 - 50, and C.A.R. Legal Q&A, "Abandoned Personal Property: Disposition of Items Left Behind After Termination of a Tenancy" for additional details.
- 10) **Rent Control Jurisdiction** – Immediately consult a real estate / eviction attorney familiar with that area's ordinances.

###

***References / Authorities** (consult these authorities, especially the Civil Code, as much additional information required, especially for landlords, well beyond the scope of this handout):

- California Civil Code § 1940 - 1954.1 (*See* 1950.5 re: deposits)
- Fair Housing Foundation (fairhousingfoundation.com)
- Judicial Council of California - Bench Guide 31 – *Landlord-Tenant Litigation*
- Rutter Guide – *Landlord-Tenant*
- CEB - *California Landlord-Tenant Practice*
- C.A.R. Publications:
 - Landlord-Tenant and Property Management
 - SUMMARY OF LANDLORD-TENANT LAW: Landlord-Tenant Guide for REALTORS®, 1/29/2016 (revised)
 - Abandoned Personal Property After Termination of a Tenancy, 1/14/2016 (revised)
 - Abandoned Rental Real Property, 4/4/2007
 - Earthquake or Other Disaster-Related Landlord-Tenant Issues, 9/14/2005 (revised)
 - Federal Lead-Based Paint Hazard Disclosures, 9/28/2005 (revised)
 - Foreclosing on Rental Property, (under revision)
 - Foreign Investor Property Owner Withholding, 1/17/2012
 - Foreign Language Translations of C.A.R. Lease/Rental Agreements and Other Forms, 4/25/2005
 - Landlord's Duty to Provide Security, 6/22/2005 (revised)
 - Landlords Must Give Notice to Tenants When Reporting Defaults to Credit Agencies, 12/13/2005 (revised)
 - Landlord-Tenant Law: Pets and Service and Support Animals, 10/1/2015 (revised)
 - Lease Listing (C.A.R. Form LL) and Residential Lease or Month to Month Rental Agreement (C.A.R. Form LR), 7/14/2004 (revised)
 - Lease/Rental Disclosure Chart for REALTORS®, 1/1/2007
 - Medical Marijuana Issues for REALTORS®, 2/7/2013 (revised)
 - Nonresident Property Owner Withholding, 9/20/2010 (revised)
 - Pets and Service and Support Animals, 2/22/2013
 - Property Management Frequently Asked Questions, 1/17/2012
 - Property Managers and the Contractor's Licensing Law, 8/9/2013
 - Requirements When Using Credit Reports/Scores To Screen Tenants, 5/9/2012 (revised)
 - Residential Rent Control Relief Law, 8/24/2005
 - Security Deposits, 12/12/2012 (revised)
 - Unlawful Detainer: The Eviction Process in California, 10/31/2011 (revised)
 - Vacation Rentals 4/24/2014
 - Smoke Alarm Requirements, Nov. 26, 2013 (revised)
 - Electronic Signatures and Records in Real Estate Transactions, 5/22/15 (revised)

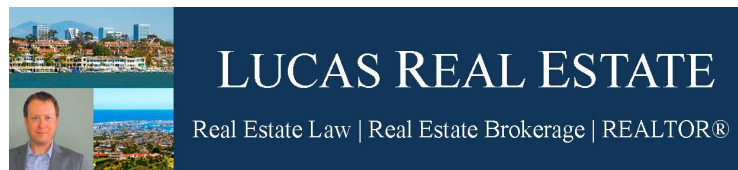
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