Landlord-Tenant Guide for REALTORS®

Member Legal Services
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I. INTRODUCTION

A general understanding of landlord/tenant law is essential for any real estate professional. The primary purpose of this legal article is to assist REALTORS® in adequately representing clients whether they are landlords or tenants and in the management of residential rental real property.

This legal article is intended to address those areas of state and federal law concerning the landlord/tenant relationship most frequently asked about or encountered. Many real estate licensees conduct their business in areas governed by local rent control laws or other local ordinances. These local ordinances are not discussed here. However, website links will be provided whenever available. When confronted with any landlord/tenant issue, parties should always contact local authorities to determine whether rent control ordinances will alter any decision-making.

II. CREATING THE LANDLORD/TENANT RELATIONSHIP

Q 1. *How is the landlord/tenant relationship created?*

A The landlord/tenant relationship is most often created by contract. This contract is called a "lease" or "rental agreement." Generally the lease or month-to-month rental agreement may be a formal written document or an informal oral agreement (Cal. Civ. Code § 1622). However, if a lease rental period is for more than one year, the lease must be in writing (Cal. Civ. Code § 1624(a)(3)).

Furthermore, even if the term is less than a year, if the term is to expire more than a year from the time the oral lease is made, it is unenforceable (Cal. Civ. Code § 1624(a)(1)). (This could happen when a lease is executed many months before a tenant takes possession.)

A tenant acquires exclusive use, enjoyment and legal possession of the property which affects the landlord's right to enter and access the property. See below for additional information as to a residential tenant's rights and a landlord's obligations in the tenancy relationship.

Q 2. ***Can you describe a typical oral rental or lease agreement?***

A Oral agreements provide an informal method of creating the landlord/tenant relationship. An oral agreement is made when the landlord and tenant intend to create a lease, and do so without formally writing down the terms.

As discussed previously, oral agreements are valid so long as the rental period is for one year or less (Cal. Civ. Code §§ 1622, 1624(a)(3)). Thus, oral month-to-month rental agreements are enforceable.

Because oral agreements are informal, it is difficult to establish what the exact terms are. In order to avoid potential disputes, it is a good idea to use a written lease or month-to-month rental agreement whenever possible. See the C.A.R. standard forms, *Residential Lease or Month-to-Month Rental Agreement* (LR) and *Commercial Lease Agreement* (CL).

Q 3. ***What are the basic legal requirements for written or oral lease agreements?***

A Whether written or oral, the minimum essential elements of a lease include:

1. identification of the parties;
2. description of the property to be leased;
3. duration of the tenancy (unless it is a month-to-month agreement);
4. amount of the rental payment; and
5. time and manner of payment.

(*Golden West Baseball Co. v. City of Anaheim*, 25 Cal. App. 4th 11 (1984).)

Written agreements can be handwritten or typed. A standard form may also be used. The parties may choose whatever wording they prefer. Of course, the terms should be clear and should reflect the intent of both parties. See the C.A.R. standard forms, *Residential Lease or Month-to-Month Rental Agreement* (LR) and *Commercial Lease Agreement* (CL).

Q 4. ***What should a written lease include?***

A The written lease should identify the rights and obligations of both parties. Complex leases cover a variety of subjects in great detail. However, even a simple month-to-month agreement should, at least, include the following topics:

1. Security deposit, if any;
2. Duration (term) of lease (see *Taylor v. Terry*, 71 Cal. 46 (1886));
3. Rental amount (see *Beckett v. City of Paris Dry Goods, Co.*, 14 Cal. 2d 633 (1939));
4. Possession, maintenance, and improvements;
5. Liability of parties for injuries;
6. Subletting, if permitted;
7. Insurance issues, if any;
8. Megan's Law database disclosure (Cal. Civ. Code § 2079.10a(a)(3));
9. CC&Rs and other regulations, if in a common interest development; and
10. Pre-move out inspection and repair rights.

Generally the parties are free to negotiate any acceptable terms and conditions. However, any provision in a residential lease requiring a tenant to waive rights associated with:

1. security deposits;
2. landlord's access to premises;
3. future lawsuits against a landlord;
4. notice or hearings; or
5. litigation proceedings

are generally void and contrary to public policy. (Cal. Civ. Code § 1953(a); *Jaramillo v. JH Real Estate Partners, Inc.,* 111 Cal. App. 4th 394 (2003)*; Henrioulle v. Marin Ventures,* 20 Cal. 3d 512 (1978).)

In addition, any other waiver of statutory rights is void unless the residential lease agreement is presented to the tenant before the tenant takes possession (Cal. Civ. Code § 1953(b)).

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.

Q 5. ***Under what circumstances does a written foreign language translation of a lease or rental agreement have to be provided to a tenant?***

A If the lease or rental transaction is negotiated in a foreign language, then a foreign language translation must be provided. For further details, please see C.A.R. Legal Q&A, Foreign Language Translations of C.A.R. Lease/Rental Agreements and Other Forms.

Q 6. ***Do landlords and/or property managers need to have a real estate license?***

A A real estate license is generally required whenever someone manages property for others for a fee. This includes activities such as negotiating leases and rental agreements, and collecting rents. (Cal. Bus. & Prof. Code § 10131.01(a)(3)(D).) Therefore property managers must possess a real estate license.

However, there are several exceptions to the licensing requirements:

1. owners may manage their own properties (Cal. Bus. & Prof. Code § 10131(b));
2. resident managers living on the premises (Cal. Bus. & Prof. Code § 10131.01(a)(1));
3. those acting under a court order (i.e., bankruptcy trustee, court-appointed receiver) (Cal. Bus. & Prof. Code § 10133(a));
4. activities of an officer of a corporation or general partner of a partnership with respect to the corporation's or partnership's own property if the officer or general partner receives no additional compensation for those activities (Cal. Bus. & Prof. Code § 10133(a)(1)); and
5. an employee of a property management firm that manages a residential apartment building, complex, or court under the supervision and control of either a broker of record or a qualified salesperson (2 years full-time experience in last 5 years and who has written contract with broker to perform supervisory duties) employed by the property management firm, may perform the following activities (Cal. Bus. & Prof. Code § 10131.01(a)(2a-e)):

- Showing rental units and common areas.
- Handling rental applications.

- Accepting security deposits, fees for credit checks or administrative costs, and rent payments.
- Accepting signed leases and rental agreements.

For more information on licensing, please refer to the C.A.R. Legal Q&As, Licensing Guide for REALTORS®, and Licensing Chart for REALTORS®.

Q **7.** ***What should landlords or property managers know about the Fair Housing laws?***

A Landlords and property managers should understand the substance of the Fair Housing laws in order to avoid violating them.

Both state and federal law prohibit discriminatory housing practices. The federal Fair Housing Act, the California Unruh Civil Rights Act and the California Fair Employment and Housing Act, as well as other statutes all restrict the ability of the landlord to discriminate. While each law may protect certain groups and not others (the federal categories are the most limited), the landlord must be in compliance with all of them.

Therefore taking the laws together, the landlord must not discriminate on any of the following grounds:

Race;
Color;
National Origin or Ancestry;
Religion;
Sex;
Familial Status (including children under the age of 18 living with parents or legal custodians, pregnant women and people securing custody of children under the age of 18);
Disability;
Sexual Orientation;
Gender Identity and Expression;
Marital Status;
Ancestry;
Breastfeeding and any medical conditions connected to breastfeeding;
Age;
Medical condition (including HIV status);
Victim of domestic violence;
Source of income;
Religious grooming or clothing practices;
Genetic information;
Discrimination based on arbitrary grounds;
Immigration Status or the absence of immigration or citizenship documentation;
Citizenship; or
Primary Language.

Also, the protections above apply to any person who is perceived to have any of the characteristics of member of a protected class even if they do not in fact belong to a protected group.

The last three categories prohibiting discrimination on the basis of immigration status, citizenship or primary language were added to the Unruh Civil Rights Act and passed into law effective January 1, 2016.The Fair Housing Act and California law also require landlords to make reasonable accommodations in their rules, policies, practices or services so as to permit a person with a

disability equal opportunity to use and enjoy a dwelling. Reasonable modifications of existing premises at the expense of the disabled person must be allowed. However, the landlord is permitted to require the renter to restore the dwelling to its previous condition when the tenancy terminates in certain circumstances. (42 U.S.C. § 3604(f)(3).)

A violation of the federal law, Americans With Disabilities Act of 1990 (ADA), is also deemed a violation of the California Unruh Civil Rights Act (Cal. Civ. Code § 51(f)). For additional information about the ADA, please see the C.A.R. Legal Q&A, American With Disabilities Act (ADA).

Certain senior citizen housing developments may impose age requirements on residents. These developments must either require all residents to be 62 years or older, or else require at least one occupant in 80 percent of all units to be 55 years or older (42 U.S.C. § 3607(b)(2)). See the C.A.R. legal article, Senior Housing Summary for additional information. The law is complicated in this area, any landlord who wishes to create a senior housing rental complex should consult with an attorney before doing so.

Q 8. ***What should landlords or property managers know before rejecting prospective tenants based on information contained in a consumer credit report?***

A For a complete answer to this question, see the C.A.R. Legal Q&A, Giving Notice of Rejection to Tenants Based on a Consumer Credit Report.

Q 9. ***Do landlords and property managers have to accept tenants who possess waterbeds?***

A It depends on whether the tenant is willing to purchase a waterbed insurance policy. Landlords and property managers can refuse to rent to tenants who possess waterbeds but do not insure them for property damage. If, however, the tenant is willing to purchase such a policy, landlords or property managers cannot refuse to rent to these tenants just because they possess waterbeds. The same applies to other bedding with liquid-filled material. (Cal. Civ. Code § 1940.5.)

To qualify for this rule, tenant waterbed insurance policies must be written for at least $100,000 of coverage. These policies must be maintained by the tenant for the entire term of the tenancy. The landlord or property manager can demand proof of insurance at any time during the tenancy. Finally, the owner is entitled to a 10-day notice of cancellation or nonrenewal of the policy. (Cal. Civ. Code § 1940.5.)

Q 10. ***May property managers sign lease agreements on behalf of property owners?***

A Yes, under certain circumstances. As agents, property managers may be authorized by the owner to enter into lease and/or rental agreements. This authorization may be oral unless the lease itself is legally required to be in writing, typically where the lease term is greater than one year. Where the lease agreement must be in writing, then the property manager must have the owner's written authorization. (Cal. Civ. Code §§ 2295, 2309; Van't Rood v.County of Santa Clara, 113 Cal. App. 4th 549 (2003).) A well-drafted property management agreement signed by the owner and property manager will eliminate the problem of oral versus written authorization. The C.A.R. standard form, Property Management Agreement (PMA) will suffice to provide written authorization.

III. SECURITY DEPOSITS

Q 11. ***What is the maximum amount a landlord may require a residential tenant to pay for a security deposit?***

A Residential property is broadly defined to include all dwellings. The amount a landlord may charge for a security deposit is highly regulated. Residential landlords are limited to a maximum security deposit equal to two month's rent for unfurnished units and three month's for furnished units (Cal. Civ. Code § 1950.5(c)). These limits cannot be waived by the tenant. While the landlord may describe some of the security deposit as "last month's rent," "cleaning deposit" or "pet fee," the landlord may not collect or demand any additional amounts for these categories. (Cal. Civ. Code § 1950.5(c).)

However, a landlord is permitted to increase the deposit by one-half of one month's rent when a landlord is accepting a tenant with a waterbed. In that situation, the landlord is also permitted to charge a reasonable fee for administrative costs. (Cal. Civ. Code § 1940.5(g).)

In addition to the security deposit, a landlord may collect the first month's rent in advance. Beyond the first month's rent, requiring a greater advance rent payment is permissible only if (1) the amount pre-paid is six months or more rent and (2) the term of the lease is six months or longer. (Cal. Civ. Code § 1950.5(c).)

Furthermore, landlords may also charge a nonrefundable application screening fee. This permissible fee was limited to $30 (in 1996) but may be increased annually commensurate with an increase in the Consumer Price Index after January 1, 1998, in 2012, the maximum screening fee could not exceed $44.51. The application screening fee may not exceed the "actual out-of-pocket costs of gathering information concerning the applicant." (Cal. Civ. Code § 1950.6(a).)

For additional information about residential as well as commercial security deposits, see the C.A.R. legal article, Security Deposits.

Q 12. ***For what purposes can the residential tenant security deposit be used?***

A Security deposits may be used for various reasons as permitted by law.. They can be used to remedy current defaults in payment of rent, to remedy future defaults by the tenant in any obligation under the rental agreement to restore, replace or return personal property or appurtenances, to repair damage caused by the tenant (beyond normal wear and tear), to clean the unit if necessary to bring it back to the same level of cleanliness at the beginning of the tenancy, and to satisfy any other tenant defaults or obligations such as taxes, insurance, or landscaping. Similarly, there are no restrictions on what the landlord can do with the deposit during the term of the rental agreement, except for what is required by local rent control ordinances. In other words, there is no state-wide requirement that the security deposit be placed in a special account or that it bear interest. (Cal. Civ. Code § 1950.5(b).)

Of course, if a licensee is managing property for an owner, a security deposit should either be given to the owner or if the broker will be holding it placed in a trust account (Cal. Bus. & Prof. Code § 10145(a)(1)). The property management agreement should specify which of these options is chosen. It is unlawful to characterize any portion of the tenant's security deposit as "nonrefundable." (Cal. Civ. Code § 1950.5(m)).

For additional information about residential as well as commercial security deposits, see the C.A.R. legal article, Security Deposits.

Q 13. ***What rules govern the return of the security deposit to the tenant?***

A Residential: Upon termination of a rental agreement on residential property, the landlord must furnish the tenant the unused portion of the security deposit and an itemized statement showing what deductions have been made, no later than 21 days after the tenant vacates the property. (Cal. Civ. Code § 1950.5(g).) The itemized statement must be accompanied by receipts or invoices issued by the person that performed the work that the deductions were used to pay for; or, if the landlord or landlord's employee performed the work, the itemized statement must list the work that was done, the time spent, and the reasonable hourly rate charged. (Cal. Civ. Code § 1950.5(g).)

C.A.R. Sample Letter ñSecurity Deposit Returnò(Form SDR) may be used for this purpose and can be found in ZipForm within the C.A.R. Sample Letters library.

If the landlord retains any of the deposit in bad faith, s/he will be liable for up to twice the amount of the deposit in punitive damages, as well as any actual damages the tenant may suffer. (Cal. Civ. Code § 1950.5(l).)

Commercial: For commercial leases, the deadline for returning a deposit is generally 30 days. However, if the landlord only claims deductions from the deposit based on defaults in the payment of rent, and if the deposit exceeds one month plus the last month's rent, then any amount exceeding one month's rent must be returned within two weeks. (Cal. Civ. Code § 1950.7(c).) If the landlord retains any of the deposit in bad faith, s/he will be liable for up to $200 in punitive damages, as well as any actual damages the tenant may suffer. (Cal. Civ. Code § 1950.7(f).)

For more information, please see the C.A.R. Legal Q&A, Security Deposits.

Q 14. ***May a tenant take the landlord (or vice versa) to small claims court over a security deposit dispute?***

A Yes, as long as the damages claimed do not exceed the jurisdictional limit for small claims court ($10,000 in most situations where the claim is brought by a natural person.). (Cal. Civ. Code § 1950.5(n); Cal. Code of Civ. Proc. §§ 116.220, 116.221.)

For more information on Small Claims Court, please see the C.A.R. Legal Q&A, Small Claims Court.

IV. PRE-MOVE-OUT INSPECTION PROCEDURE

Q 15. ***What is the pre-move-out inspection procedure?***

A Tenants have the right to request an inspection of the premises before they move out. The law gives tenants an opportunity to correct any identified deficiencies in the condition of the property, and thereby minimize deductions, if any, from their security deposits.

The procedures for the pre-move-out inspection are as follows:

Providing Notice of Inspection Rights. Within a reasonable time after either the landlord or tenant gives notice to terminate the tenancy, or before the end of a fixed-lease term, the landlord must give

the tenant written notice that the tenant may request an initial inspection, and may be present at that inspection (Cal. Civ. Code § 1950.5(f)(1)).

You may use C.A.R. standard form, Notice of Right to Inspection Prior to Termination of Tenancy (NRI). An optional form that may be delivered with the NRI form or at any time before the tenant vacates is C.A.R.ôs Sample Letter, ñInstructions When Tenant Vacates on Termination of Tenancy.ò

Scheduling the Inspection. If the tenant requests an inspection, the parties must try to schedule a mutually acceptable date and time. If the tenant does not request an inspection, the landlord's duties regarding the inspection are discharged (Cal. Civ. Code § 1950.5(f)(1)).

If the tenant requests an inspection, C.A.R. standard form, *Notice of Right to Inspection Prior to Termination of Tenancy* (NRI), may be used to schedule the inspection.

Providing 48-Hour Notice of Inspection. For a tenant requesting an inspection, the landlord must give at least 48 hours prior written notice of the date and time of the inspection, whether the parties agreed to a mutual time, or could not schedule a mutually acceptable time (Cal. Civ. Code § 1950.5(f)(1)).

You may use C.A.R. standard form, *48-Hour Notice of Inspection Prior to Termination of Tenancy*(FEHN).

Conducting the Inspection: The landlord or landlord's agent must conduct the inspection at a reasonable time no earlier than two weeks before the end of the lease. The landlord must proceed with the inspection whether the tenant is present or not, unless the tenant withdraws the request for inspection (Cal. Civ. Code § 1950.5(f)(1)).

Preparing the Inspection Statement: Based on the inspection, the landlord must prepare an itemized statement of repairs or cleaning that are proposed to be the basis of any deductions from the security deposit. This statement must include the statutory language in California Civil Code sections 1950.5(b) and (d) which set forth, among other things, the items that may be properly deducted from the security deposit (Cal. Civ. Code § 1950.5(f)(2)). (See Question 12 above.)

You may use C.A.R. standard form, *Pre-Move-Out Inspection Statement* (PMOI).

Delivering the Inspection Statement: The landlord must give the inspection statement to the tenant if the tenant is present for the inspection, or leave it inside the premises (Cal. Civ. Code § 1950.5(f)(2)).

Providing an Opportunity to Correct: The tenant must be given an opportunity to avoid deductions from the security deposit by remedying any identified deficiencies in a manner consistent with the rental agreement (Cal. Civ. Code § 1950.5(f)(3)).

Waiver of 48-Hour Notice: Section 1950.5(f) allows waiver of the 48-hour notice of inspection if the waiver is in writing signed by both the landlord and tenant. However, section 1954 independently requires the landlord to provide written notice of the landlord's intent to enter to conduct a pre-move-out inspection, and section 1954 does not explicitly allow waiver. Thus, to be prudent, a landlord should provide written notice of an upcoming inspection, and refrain from invoking the right to waive that notice requirement until the courts or the California legislature clarify this issue. (Cal. Civ. Code § 1950.5(f)(1); Cal. Civ. Code § 1954(d)(1)).)

Normal Business Hours: In the event that the tenant wants a pre-move-out inspection but the parties cannot mutually agree to a date and time, the landlord must unilaterally set a date and time

for the inspection, and notify the tenant accordingly. A landlord should err, if necessary, on the side of caution by making sure that any unilaterally scheduled date and time are during "normal business hours" as required by section 1954. There is no statutory definition for "normal business hours," but some practitioners interpret it as excluding evenings and weekends. (Cal. Civ. Code § 1954(b).)

Methods of Service: Section 1950.5(f) does not provide any specific methods of serving the required notices. However, because section 1950.5(f) has been incorporated into section 1954, a prudent landlord should deliver the inspection notices in one of the following ways:

1. Personal delivery to the tenant;
2. Left with someone of suitable age and discretion at the premises;
3. Left on, near, or under the usual entry door in a manner that a reasonable person would discover the notice; or
4. Mailed to the tenant (A notice mailed at least six days before an intended entry is presumed reasonable notice absent evidence to the contrary).

V. TENANT RESPONSIBILITIES AND LANDLORD REMEDIES

Q 16. *What are a tenant's obligations?*

A Basically, the tenant must pay rent, care for the premises, and meet any additional requirements described in the lease or rental agreement. In particular, a tenant has the following affirmative obligations:

1. to keep the premises clean and sanitary;
2. to dispose from the dwelling unit all rubbish, garbage, and other waste, in a clean and sanitary manner;
3. to properly operate all electrical, gas and plumbing fixtures and keep them as clean and sanitary as their condition permits;
4. not to permit any person, on the premises with the tenant's permission, to willfully or wantonly destroy, deface, damage, impair or remove any property that is part of the dwelling unit or fixture;
5. to use the portions of the property for living, sleeping, cooking, or dining purposes as intended to be used.

(Cal. Civ. Code § 1941.2.)

Q 17. *When is rent due?*

A Unless the contract or local custom indicate otherwise, rent is due at the end of each term so long as the term itself does not exceed one year. In other words, rent is generally not due in advance unless a payment date is specified by contract or custom. (Cal. Civ. Code § 1947.)

Landlords should avoid potential confusion by putting the lease provisions into writing. If rent is to be paid in advance, the written contract should specify this clearly.

Q 18. *If a tenant refuses to pay rent, can a landlord shut off utilities?*

A The answer depends on whether the property is residential or commercial.

Residential: No. By law, a landlord cannot interrupt a tenant's utility services if the intent is really to evict the tenant. In this context, "utilities" includes but is not limited to water, heat, light, electricity, gas, telephone, elevator, or refrigeration. This law applies to utilities in either the tenant's or the landlord's name. (Cal. Civ. Code § 789.3(a).)

Commercial: There is no California statute that addresses this issue. Nevertheless, this sort of self-help remedy is not advisable even if the tenant has breached the agreement, except on the advice of the landlord's legal counsel.

Q 19. *Are tenant "lock-outs" legal?*

A A tenant "lock-out" is changing the locks on the premises while the tenant is away from the property. The answer to this question depends on whether the property is residential or commercial.

Residential: No. A landlord cannot terminate the tenancy by simply changing the locks. (Cal. Civ. Code § 789.3(b)(1).) A landlord must evict the tenant lawfully. (See Questions 50-54). It is also illegal for landlords to remove the tenant's personal property from the premises before the tenancy islawfully terminated. (Cal. Civ. Code § 789.3(b)(3).) See also Question 47 regarding abandoned personal property, as well as the C.A.R. Legal Q&A, Abandoned Personal Property: Disposition of Items Left Behind After Termination of a Tenancy.

Commercial: There is no California statute that addresses this issue. However, this sort of self-help remedy is inadvisable even if the tenant has breached the agreement, except on the advice of the landlord's legal counsel.

Q 20. *What happens if a landlord shuts off a tenant's utilities or locks a tenant out illegally?*

A Residential: If a residential landlord illegally cuts off utilities or locks a tenant out, s/he is liable to the tenant for:

- Actual damages; and
- As much as $100 for each day the landlord violates the law. (The minimum award must be at least $250 even if the landlord violates the law just one day.)

(Cal. Civ. Code § 789.3(c).)

The tenant may seek an injunction to prevent further violations of this law by the landlord. Also, reasonable attorney's fees are awarded to the prevailing party. (Cal. Civ. Code § 789.3(d).)

Commercial: The tenant may be able to sue for breach of contract, trespass, and other legal theories if the landlord violates their agreement.

Q 21. *Is a tenant allowed to make alterations to the property?*

A As a rule, minor alterations are allowed, while substantial alterations are not permitted unless there are express lease provisions allowing for them. (*Briggs v. Sherman,* 65 Cal. App. 249 (1924); *Spring St. Realty Co. v. Trask,* 126 Cal. App. 765 (1932).)

Whether an alteration is substantial or not depends on:

1. how much it costs to reverse, in relation to the rent;
2. the length of the lease term;
3. how much it benefits the tenant as compared to whether and how much it benefits the landlord;
4. whether the repair or reversal is structural in nature;
5. how much the enjoyment of the property will be interfered with while the reversal is in progress; and
6. how likely it was that the parties had contemplated the legal implications.

(*Glenn R. Sewell Sheet Metal, Inc. v. Loverde,* 70 Cal. 2d 666 (1969).)

Q 22. *May a landlord require a tenant to pay a late charge if the tenant fails to pay rent on time?*

A Yes, but only if the contract specifies that late charges will be imposed. It is important to keep in mind that a late charge is a liquidated damages provision. As such, certain statutory requirements govern these charges. The requirements differ in residential and commercial contexts. (Cal. Civ. Code § 1671(b).)

Residential: First, the actual damage to a landlord (when a tenant pays rent late) must be very difficult to prove. This requirement should be fairly easy to satisfy since it is hard to estimate ahead of time the administrative cost of obtaining and processing late payments. (Cal. Civ. Code §§ 1671(c), 1671(d).)

Second, case law indicates that the amount specified must reflect a "reasonable endeavor to estimate a fair compensation" for tenant's default. In other words, the landlord cannot impose an arbitrary penalty charge on the tenant. In court decisions, a 1-1/2 percent charge was upheld as reasonable but a charge of 20 percent was considered a penalty and was held invalid. (*Fox v. Federated Department Stores, Inc.*, 94 Cal. App. 3d 867 (1979); *Spring Valley Gardens Associates v. Earle,* 112 N.Y. Misc. 2d 786 (1982).)

The law regarding late charges for residential mortgages should provide some guidance for residential landlords. The limit on those late charges is 6 percent or $5, whichever is greater. Also, these late charges on residential mortgages are imposed only after a 10-day grace period. (Cal. Civ. Code § 2954.4(a).) However, there are no statutes or court decisions requiring a grace period for late payments of rent. The C.A.R. standard residential lease form, RL, provides a default 5-day grace period.

Commercial: Late charge provisions in commercial leases are generally upheld. To challenge the late charge, the tenant must successfully prove that the provision was unreasonable in light of circumstances existing at the time the contract was made. (Cal. Civ. Code § 1671(b).) Once again, the amount specified as a late charge must be a reasonable estimate of actual damages and not merely a penalty for paying rent late. (See *Ridgley v. Topa Thrift & Loan Assn.*, 17 Cal. 4th 970

(1998); *Harbor Island Holdings v. Kim*, 107 Cal. App. 4th 790 (2003).) The C.A.R. standard commercial lease form, CL, provides a default 5-day grace period and a 10% late charge.

Q 23. *May a landlord report a tenant default to credit agencies?*

A Yes, but the landlord must give written notice to the tenant either prior to or within 30 days of submitting the negative credit information. (Cal. Civ. Code § 1785.26.) A landlord is liable if s/he does not at least maintain reasonable procedures to comply with this requirement. (Cal. Civ. Code § 1785.26(d).)

For more information, see the C.A.R. Legal Q&A, Landlords Must Give Notice to Tenants When Reporting Defaults to Credit Agencies.

Q 24. *What are the rights and obligations of landlords and tenants regarding insurance?*

A Absent any provisions in the lease regarding insurance, neither landlord nor tenant has an interest in the other party's insurance, nor an obligation to obtain coverage for the benefit of the other party. (*Alexander v. Security-First Nat. Bank of Los Angeles,* 7 Cal. 2d 718 (1936).)

However, when one party is obligated by the terms of the lease to purchase insurance to protect the other party, then both landlord and tenant are entitled to participate in the insurance proceeds, as determined by the lease provisions. (*Alexander v. Security-First Nat. Bank of Los Angeles,* 7 Cal. 2d 718 (1936); *Kotlar v. Hartford Fire Ins. Co.,* 83 Cal. App. 4th 1116 (2000).)

VI. LANDLORD RESPONSIBILITIES AND TENANT REMEDIES

Q 25. *What are a landlord's duties?*

A The landlord's duties include:

1. Providing "peaceful and quiet enjoyment" of the premises to the tenant;
2. Providing the tenant with safe and healthy premises (residential landlords only); and
3. Providing the tenant with certain disclosures regarding the property.

These duties may be set out in the contract, by statute, or both. Where the rental agreement is oral, these duties will be implied by law.

Q 26. *What does "peaceful and quiet enjoyment" mean?*

A This means that every tenant can expect to enjoy exclusive possession of the premises, undisturbed by the landlord during the entire rental period. (Cal. Civ. Code § 1927.)

Q 27. *What does the residential landlord's duty to provide safe and healthy premises include?*

A Residential tenants have the right to live in property maintained in a state of good repair beyond the mere necessities for survival. In other words, the property must be safe and fit for human habitation. (Cal. Civ. Code § 1941.) This includes a requirement that the premises be watertight and sanitary, free of garbage, and equipped with functioning doors, windows, running water, plumbing, and gas and/or electrical systems (Cal. Civ. Code § 1941.1).

Each dwelling unit must be equipped with a dead bolt lock on each main swinging entry door as well as locks on windows designed to be opened, and exterior doors to common areas must also be fitted with locks (Cal. Civ. Code § 1941.3(a)).

The landlord must also maintain inside telephone wiring and install at least one `usable phone jack in each unit (Cal. Civ. Code § 1941.4).

Although residential landlords are not strictly liable for injuries caused by latent defects and dangerous conditions on the property, the landlord is not absolved of a duty of care merely because he or she is unaware of the dangerous condition that causes injury at the time the property is leased to the tenant. (Resolution Trust Corp. v Rossmoor Corp. (1995) 34 Cal. App. 4th 93). Landlords should always inspect the premises before giving possession to a tenant. It may be advisable for a landlord to take and save photographs of the interior of the unit, and also exterior of the property, at the commencement of the tenancy as protection against future liability.

In commercial leases, all these issues are negotiable (Glenn R. Sewell Sheet Metal, Inc. v. Loverde,70 Cal. 2d 666 (1969)). Clauses in written agreements that shield commercial landlords, however, may be subject to narrow interpretation (Burnett v. Chimney Sweep, 123 Cal. App. 4th 1057 (2004)).

Q 28. ***What are the obligations of the landlord to place smoke alarms on a rental property.***

A The location requirements and the type of the smoke alarms have been changed commencing January 1, 2016. Prior to this date for pre- August 1992 single family properties, the smoke alarms only need be centrally located outside each sleeping area.

However, after January 1, 2016, a landlord (that is, any person who rents a property) shall install additional smoke alarms, as needed, to ensure that the smoke alarms are located in compliance with current building standards. (H&S Code §13113.7(d)(3)). Presently, current building standards for single family properties require a smoke alarm in 1) each bedroom, 2) centrally located outside each sleeping area and 3) on every floor including the basement regardless of whether there is a sleeping area on the floor or the basement (California Building Code [F] 907.2.10.1.2). However, the law will not require the landlord to replace existing alarms unless they are inoperable. Then, of course, they must replace them with the newer ones approve d by the State Fire Marshall. There is no requirement to upgrade to hard-wired if the alarms are presently battery operated.

The rules are the same for a condominium, stock cooperative, time-share project, duplexes or apartment complex or dwelling unit in which one or more units is rented or leased. However, in the case of apartment complexes and other multiple-dwelling complexes, a smoke detector shall be installed in the common stairwells.

The landlord is responsible for testing and maintaining smoke alarms in all units and in the common stairwells of apartment complexes and other multiple dwelling complexes. Commencing on January 1, 2014, the landlordôs obligation to test and maintain the smoke alarms extends to single-family

dwellings as well. (H&S Code §13113.7(d)(2)) The landlord (beginning January 1, 2014) cannot make the tenant responsible for testing and maintaining the smoke alarms even if it is a single family residence.

The tenant has a duty to notify the manager or owner if the tenant becomes aware of an inoperable smoke alarm within his or her unit. The owner or authorized agent is not in violation for a deficient smoke alarm if he or she has not received notice of the deficiency from the tenant. (Cal. Health& Safety Code § 13113.8(e).)

Please see our Q&A ñSmoke Alarm Requirementsòfor a more information.

Q 29. *What happens if a residential landlord fails to maintain the premises in a safe and/or healthy condition?*

A If residential premises are not maintained in habitable condition as required by law, the tenant is entitled to use the lack of habitability as a defense in an unlawful detainer action (Green v. Superior Court of San Francisco, 10 Cal. 3d 616 (1974); Hinson v. Delis, 26 Cal. App. 3d 62 (1972)); or the tenant, after giving the landlord reasonable written notice, may make his/her own repairs and deduct up to one month's rent as compensation (Cal. Civ. Code § 1942(a)), may vacate the property (Cal. Civ. Code § 1942(a)), or may withhold rent until the property is habitable (Green, supra and Cal. Code if Civ. Pro. §1174.2.).

Tenants may use this "repair and deduct" remedy only twice in any 12-month period (Cal. Civ. Code § 1942(a)). Tenants are also entitled to contact local health authorities if they wish to report an unhealthy condition. However, if a tenant abandons without giving notice, s/he will be liable for breach of the lease.

A landlord may not demand or collect rent, increase the rent, or issue a notice to pay rent or quit if all the following conditions are met:

1. the dwelling does not conform with Civil Code § 1941.1, as discussed in Question 27 or is otherwise dangerous or unhealthy (see Cal. Health & Safety Code §§ 17920.3, 17920.10);
2. a public officer responsible for the enforcement of housing law has inspected the premises and notified the landlord in writing of his/her obligations to make repairs;
3. thirty-five days have elapsed since that notice in (2) was served, and the landlord has yet to comply; and
4. the dangerous or unhealthy conditions were not caused by the tenant's failure to use the premises properly and with care or to keep the premises clean and sanitary.

(Cal. Civ. Code § 1942.4(a).)

When all of these conditions are met, a landlord who demands or collects rent or increases the rent, or issues a notice to pay rent or quit, is liable to the tenant for actual damages and special damages of at least $100, but not exceeding $5,000, with reasonable attorney's fees and costs to be awarded to the prevailing party (Cal. Civ. Code § 1942.4(b)).

Q 30. *What happens if the residential landlord attempts to evict the tenant for calling in local health authorities?*

A Landlords must remember that tenants may not be evicted from residential property in retaliation for the exercise of any legal right. In fact, if a tenant either employs a legal remedy or makes a complaint to the landlord in an effort to enforce any legal right, the landlord is not permitted to evict the tenant for any reason (except non-payment of rent) for six months. (Cal. Civ. Code § 1942.5(a).)

If the landlord attempts to evict the tenant for making repairs or for reporting an unhealthy condition to a governmental agency, it is called a "retaliatory eviction" and is in violation of the law (Cal. Civ. Code § 1942.5(a)). Any waiver of these rights by the tenant is void (Cal. Civ. Code § 1953).

The law provides for punitive damages against the landlord of "not less than $100 nor more than $2,000 for each retaliatory act if there is any fraud or malice involved" (Cal. Civ. Code § 1942.5(f)(2)). There is also a provision for reasonable attorney's fees to the prevailing party (Cal. Civ. Code § 1942.5(g)).

Q 31. ***What are the residential landlord's disclosure duties?***

A For a complete summary of all of a residential landlord's disclosure obligations, see the C.A.R. Legal Chart, Lease/Rental Disclosure Chart for REALTORS®.

Q 32. ***Does the landlord ever have a right to enter the leased property after the tenant takes possession?***

A Yes, but only under certain conditions and for some of these conditions written notice is required, for some no notice is required, and for others oral notice will suffice. In addition, the extent of these rights depends on whether the property is residential or commercial.

Residential: For purposes of this discussion, residential refers to any "dwelling." It includes multi-unit apartment complexes (i.e., not limited to 1-4 units).

The rights of a landlord to enter a dwelling are severely limited by statute. A landlord may enter onlyunder the following circumstances:

1. In case of emergency;
2. 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 as described in Civil Code § 1950.5;
3. When the tenant has abandoned or surrendered the premises; or
4. Pursuant to court order.
5. For the purpose of installing, repairing, testing, and maintaining single station smoke alarms. (Health and Safety Code §13113.7)

(Cal. Civ. Code § 1954(a).)

The following rules apply regarding entry into residential properties:

(1) Entry During Normal Business Hours

With the exception of emergencies, cases of abandonment or surrender, the landlord can enter only during "normal business hours" unless the tenant consents to an entry during other than normal business hours at the time of entry (Cal. Civ. Code § 1954(b)). There is no statutory definition for "normal business hours," but some practitioners interpret it as excluding evenings and weekends.

(2) Reasonable Written Notice

"Reasonable" notice must be given to the tenant, and 24 hours is presumed reasonable. In addition, the notice must be in writing--*except as indicated below*--and include the date, approximate time, and purpose of the entry. The notice may be personally delivered to the tenant, left with someone of a "suitable age and discretion" at the premises, or, left on, near or under the usual entry door of the premises in a manner in which a reasonable person would discover the notice. (Cal. Civ. Code § 1954(d)(1).)

(3) Mailing of Notice

The notice may be mailed to the tenant. At least six days prior to an intended entry is presumed reasonable notice in the absence of evidence to the contrary. (Cal. Civ. Code § 1954(d)(1).)

(4) Purpose of Entry to Show Unit

If the purpose of the entry is to show the unit to a prospective or actual purchaser, the notice may be given orally, in person or by telephone, if either the landlord or his or her agent has notified the tenant in writing within 120 days prior to the oral notice that the property is for sale and that the landlord or agent may contact the tenant orally to show the unit (Cal. Civ. 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) (Cal. Civ. Code § 1954(d)(2)).

(5) Purpose of Entry to Make Agreed Repairs

The landlord and tenant may agree orally to an entry to make agreed repairs or provide agreed services. The agreement must include the date and approximate time of the entry and must be within one week of the oral agreement. (Cal. Civ. Code § 1954(d)(3).)

(6) No notice is required to respond to an emergency (Cal. Civ. Code § 1954(e)(1)).

(7) No notice is required if the tenant is present and consents to the entry at the time of the entry (Cal. Civ. Code § 1954(e)(2)).

(8) No notice is required if the tenant has abandoned or surrendered the unit (Cal. Civ. Code § 1954(e)(3)).

(9) 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 in 2013 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 daysô notice, and the tenant should have the right to propose alterative days for the open house. Please see the article ñEntering Tenant-Occupied Propertyòfrom the 2015 June/July edition of California Real Estate Magazine, http://www.onlinedigitalpubs.com/publication/?i=261353.

Finally, the tenant cannot waive these rights (Cal. Civ. Code § 1953(a)(1)).

Commercial: Here, a landlord's right of entry may be much broader than in the residential setting. Commercial landlords' rights of entry are a matter of contract. There is no statute which specifically limits the landlord's access to the premises. However, if the contract is silent as to access rights, the landlord should not presume to have any.

VII. TRANSFER OF PROPERTY BY LANDLORD

Q 33. *How does a sale or transfer of the property affect the lease?*

A Landlords can freely transfer their interest in the leased premises unless their lease agreement prohibits it (*Upton v. Toth*, 36 Cal. App. 2d 679 (1940)). If a landlord sells leased property, the lease remains valid. The purchaser becomes the new landlord and is generally subject to the lease provisions, and the tenant becomes the tenant of the purchaser. All rights and obligations of the original lessor are transferred to the purchaser. (*Garetson v. Hester*, 57 Cal. App. 2d 39 (1943); see also *Smith v. Royal Ins. Co*., 93 F. 2d 143 (9th Cir. 1937).)

An exception to this rule provides that an unrecorded lease for more than one year would not be binding on a subsequent purchaser in good faith (i.e., without notice of the lease) who has recorded a prior interest (e.g., a recorded option to purchase the property that preceded the lease). However, when the tenant is in possession of the premises, the purchaser is put on notice of the tenant's interest and is not considered a purchaser in good faith. (*Sheerer v. Cuddy*, 24 P. 713 (1890)).

Q 34. *What happens to the tenant's security deposit when a landlord sells the property?*

A Upon termination of a landlord's interest in the property, whether by sale, death or foreclosure, the landlord must do one of the following acts in regard to the security deposit.

The residential landlord can either 1) transfer the deposit minus lawful deductions to the tenant or 2) the landlord can transfer the deposit minus lawful deductions to the new owner and notify the tenant of the name and address of the new owner (Cal. Civ. Code § 1950.5(h)). In either event, the landlord must within a reasonable time after closing notify the tenant. C.A.R Sample Letter ñOwner to Tenant Security Depositò(Form OTSD) can be used for this purpose. A landlord who properly follows this procedure is relieved from further liability with respect to the security deposit held.

Prior to close the landlord/seller must deliver to the buyer a statement in writing indicating his or her election of one or two. Additionally, if the deposit is passed on to the new owner, the landlord must also deliver a statement to the new owner accounting for all deductions lawfully taken from the deposit (Cal. Civ. Code § 1950.5(i)).

Even though the law gives the landlord/seller the option of choosing one of the two above options, the C.A.R. Residential Income Purchase Agreement (Form RIPA) under paragraph 9 requires that the balance of the deposit be transferred to the buyer at close of escrow (although the landlord/seller would still have the option of making deductions). For any of the C.A.R. purchase agreements, where the tenant is to remain on the property after close, the Tenant in Possession Addendum (Form TIP) is recommended. This form, too, contains a provision that requires the landlord/seller landlord/seller to forward the balance of the security deposit through escrow (again giving the landlord/seller the option to make deductions).

The current and former landlords are jointly and severally liable for the payment of the security deposit if these procedures are not followed (Cal. Civ. Code § 1950.5(j)).

For a complete discussion of residential and commercial security deposit law, please see the C.A.R. Legal Q&A, Security Deposits.

Q 35. *Does a tenant have to allow a seller or seller's agent to show the property?*

A The answer to this question depends on whether the tenant is occupying residential or commercial property.

Residential Property: Yes. As discussed in Question 31, California statutory law specifically limits a residential landlord's right of entry. This law does allow a landlord to enter the leased premises for the purpose of showing the property to "prospective or actual purchasers" (Cal. Civ. Code § 1954(a)(2)). Of course, reasonable notice must be given and the property can only be shown during normal business hours (Cal. Civ. Code § 1954(d)(1)). As a practical matter, however, residential landlords should probably include a provision in the lease that discusses this subject because tenants probably will not be aware of the California law. Finally, should a tenant refuse access to the property, neither the landlord nor the real estate agent may enter the property. However, refusal may be grounds for eviction.

Commercial Property: Maybe. Commercial landlords should negotiate for this right before executing a lease agreement. The law discussed above applies to "dwellings." Therefore, if the lease is not specific about the landlord's right to show the property, a commercial landlord should not enter the premises for that purpose without a tenant's written permission.

Q 36. *What can a landlord do if the tenant refuses to permit access to the property?*

A Once again, this issue turns on whether the premises are residential or commercial.

Residential: The California statute granting a landlord the right of entry under certain circumstances does not address what happens if a tenant unreasonably refuses entry to the landlord. The landlord could probably evict the tenant based upon a three day Notice to Perform Covenant or Quit where the entry rights are stated in the lease. Or, if such entry rights in the lease, the landlord could sue for monetary damages. (See Cal. Civ. Code § 1954.). If the lease does not describe the landlordôs right to enter, it is unclear whether a landlord could evict on this basis.

Commercial:

1. If the lease allows the landlord to show the property, the tenant's refusal of that right constitutes a breach of their agreement and the landlord could probably terminate the lease based upon a three day Notice to Perform Covenant or Quit. At a minimum, the landlord could receive monetary compensation if he is damaged by the refusal.
2. If the lease does not cover this issue, the landlord's entry to show the property without permission would probably constitute a breach of their agreement and the tenant might be able to terminate the lease and/or recover monetary compensation.

Please see the article ñEntering Tenant-Occupied Propertyòfrom the 2015 June/July edition of California Real Estate Magazine.

Q 37. ***What is a tenant "Estoppel Certificate"?***

A An Estoppel Certificate is a statement signed by the tenant describing the terms of the tenancy. It is used in connection with real property sales and loan transactions. A typical tenant estoppel certificate discusses such things as whether the landlord is in default on the lease, the term of the lease, the amount of rents that are paid, and similar items. See C.A.R. standard form, *Tenant Estoppel Certificate* (TEC). The purpose of the certificate is to provide real property purchasers and lenders with an accurate description of the existing landlord/tenant relationship. Purchasers and lenders may rely on the statements made by the tenant. (Cal. Evid. Code § 622.)

Tenants are not required to provide estoppel certificates unless a provision in their lease agreement requires them to do so. Landlords should keep this in mind when negotiating a lease, since they may need to provide an estoppel certificate if the property is later sold or refinanced. The C.A.R. standard lease agreement ñResidential Lease or Month-to-Month Rental Agreementò(Form LR) contains a requirement that a tenant complete an estoppel certificate upon request (item 37).

Q 38. ***What should be done when the buyer takes possession of the property <u>with seller's permission</u> before the close of escrow?***

A A separate agreement should be reached between seller and buyer which recites the rights and duties of both parties during this period before escrow closes. This agreement should be in writing. See, for example, C.A.R. standard form, *Interim Occupancy Agreement* (IOA).

Q 39. ***What if the buyer takes possession <u>without the seller's permission</u> before the close of escrow?***

A If the buyer gains entry unlawfully and then refuses to surrender the premises after a written five-day notice, s/he is probably guilty of forcible detainer (Cal. Code of Civ. Proc. § 1160).

Although the entry is unlawful, police typically refuse to get involved. Therefore, sellers have the choice of filing a civil unlawful detainer action or working out the problem through some sort of compromise with the buyer.

Q 40. ***What should be done when the seller remains on the property <u>with the buyer's permission</u> after escrow closes?***

A A separate agreement should be reached between seller and buyer which details the rights and duties of both parties during this period before the seller moves out. This agreement should be in writing. See, for example, C.A.R. standard form, *Residential Lease Agreement After Sale* (RLAS) or C.A.R. standard form, Seller In Possession Addendum (SIP) for occupancies of less than 30 days..

The parties could negotiate to have a certain portion of seller's proceeds remain in the escrow account to cover the buyer's expenses for the rental period, such as loan principal, interest, taxes and insurance (often referred to as "PITI"). Of course, any other expenses such as gardening or pool service may be also be charged to the seller/tenant.

Q 41. ***What can a buyer do if there is no agreement for the seller to hold over, but the seller refuses to move after escrow closes?***

A In this situation, the seller is treated like a holdover tenant at the end of a lease. Except that the buyer may begin eviction proceedings against the former owner only after serving a three-day notice to quit (Cal. Code of Civ. Pro. § 1161a(b)(4)). C.A.R. form Notice To Quit (NTQ) may be used for this purposes. However, following the notice, if the holdover seller has not vacated, an unlawful detainer suit will be necessary to force the seller's physical removal from the property. See Questions 50-54 for a discussion of the eviction process. See also the C.A.R. Legal Q&A, Unlawful Detainer: the Eviction Process in California.

Q 42. ***May a buyer of property find a tenant and execute a lease prior to closing escrow with the seller?***

A Yes. Of course the lease will be effective only if escrow closes (which provision should be written into the lease). But if access to the property is necessary before the close of escrow, a buyer must obtain the seller's permission to "show" the premises. Buyers should negotiate this point prior to executing a purchase agreement and incorporate the needed provisions into the purchase agreement.

VIII. TRANSFER OF LEASEHOLD BY TENANT

Q 43. ***Does the tenant have a right to assign or sublet?***

A Residential:

In the absence of a contract provision to the contrary, a tenant has the right to transfer the leasehold interest, either by assignment or by sublease (La Laguna Ranch Co. v. Dodge, 18 Cal. 2d 132 (1941); Standard Oil Co. of California v. John P. Mills Organization, 3 Cal. 2d 128 (1935); Brown v. Copp, 105 Cal. App. 2d 1 (1951)). Lease or rental agreements may prohibit assignment and subletting altogether. Others may condition the transfer of any leasehold interest on the landlord's consent. The C.A.R. residential lease agreement, Residential Lease or Month-to-Month Rental Agreement (LR) (revised 12/13) prohibits assigning, transferring or subletting any portion of the premises without the landlord's prior written consent.

Commercial:
The tenant's right to transfer the leasehold interest may be absolutely restricted so long as the lease states this clearly (Cal. Civ. Code § 1995.230). If the lease is silent on the right of the tenant to transfer, the tenant enjoys the right to unrestricted transfer (Cal. Civ. Code § 1995.210(b)). Any ambiguity in the lease will be construed in favor of the tenant's right to transfer (Cal. Civ. Code § 1995.220).

A commercial landlord may also place reasonable conditions on consent to the tenant's transfer of the leasehold interest. For example, a lease may state that some or all of the money (in excess of rent due under the lease) shall be paid to the landlord (Cal. Civ. Code § 1995.240). When a commercial lease provision requires the landlord's consent for transfer but does not indicate any express standard, the landlord may not withhold consent unreasonably (Cal Civ. Code § 1995.260).

If a commercial tenant makes a written request for a statement of reasons for withholding consent and the landlord fails to respond in writing within a reasonable time, the landlord's refusal to consent will be presumed unreasonable (Cal. Civ. Code § 1995.260).

IX. TERMINATION OF TENANCY

Q 44. *When and how are tenancies terminated?*

A There are many ways a tenancy may terminate. When and how to do so depends on factors that include whether the tenancy is for a fixed term or is periodic, whether a term in the agreement provides for automatic renewal, whether the tenant has abandoned the property, and whether or not the tenant has breached the lease agreement.

Fixed term tenancies: Fixed term tenancies end automatically without notice at the end of the time specified in the lease (Cal. Civ. Code § 1933; *Ryland v. Appelbaum*, 70 Cal. App. 268 (1924)). A tenant may or may not have the right to extend or renew the tenancy, depending on the provisions of the lease itself. As a general rule, if the landlord accepts rent from the tenant after the lease expires, a month-to-month tenancy is presumed (Cal. Civ. Code § 1945; *Renner v. Huntington-Hawthorne Oil & Gas Co.*, 39 Cal. 2d 93 (1952)).

Although fixed term tenancies end automatically without notice, it is always advisable to provide advance notice. C.A.R.ôs Sample Letter ñLease Expiration Letterò may be used for this purpose and can be found in ZipForm within the C.A.R. Sample Letters library.

Automatic Renewal or Extension: Any provision in a printed residential lease which automatically renews or extends the lease (where, for example, the tenant remains in possession after the lease expires, or where the tenant fails to notify the landlord of an intent not to renew) must appear in at least eight-point bold-face type in the body of the lease, and a recital of this fact must appear just above the signature line, also in at least eight-point bold-face type. If not, it will be voidable by the party who did not prepare the lease. (Cal. Civ. Code § 1945.5.)

Periodic Tenancy. Periodic tenancies (e.g., month-to-month, week-to-week), continue until either the landlord or tenant terminates the tenancy with proper notice. See Question 44 for more details and exceptions to this rule.

Abandonment. Special rules apply in this situation. Please see Questions 47-49.

Rescission/Cancellation Agreement. A lease can terminate through the express mutual agreement of landlord and tenant (*Kreling v. Walsh,* 77 Cal. App. 2d 821 (1947)).

Breach of the Lease/Rental Agreement. Either party may terminate immediately if there is amaterial breach of a covenant or condition in the lease or rental agreement by the other party (*Knight v. Black*, 19 Cal. App. 518 (1912). However, this does not mean that either party can benefit from their own breach. For example, a tenant who wants to get out of the lease cannot use their own breach as a basis to cancel the lease.

Q 45. *How does a residential landlord or tenant terminate a periodic (e.g., month-to-month) tenancy?*

A

Landlord Terminating the Tenancy

60-Days Notice:

- For residential leases the landlord must provide sixty (60) days written notice to terminate any periodic tenancy, if all tenants and residents have been in the property for at least one year (Cal. Civ. Code § 1946.1(a) and (b)).

30-Days Notice:

- In cases where any tenant or resident has been residing in the property for less than one year, then thirty (30) days written notice is sufficient (Cal. Civ. Code § 1946.1(c)).
- Additionally, the landlord can give just thirty (30) days written notice to terminate a periodic tenancy when all of the following conditions have been met:
    1. the dwelling is a separately alienable unit (e.g. condo, single family residence, townhouse; but not a duplex, triplex or other multi-unit property);
    2. the owner is in contract to sell the unit to a bona fide purchaser for value;
    3. escrow has been established with a licensed escrow agent or licensed real estate broker;
    4. the buyer is a natural person (or persons);
    5. notice is given within 120 days after escrow is opened;
    6. notice was not previously given to the tenant; and
    7. the buyer intends to live in the property for at least one full year.

(Cal. Civ. Code § 1946.1(d).)

90-Days Notice:

Effective until December 31, 2019, a month-to-month tenant (or subtenant) in possession of a rental housing unit at the time a property is sold in foreclosure must be given 90 daysôwritten notice to quit.

If the tenant (or subtenant) is in a fixed term lease, all rights and obligations of the lease survive the foreclosure. However, the tenancy may still be terminated on 90 daysônotice to quit if any of the following apply:

1. The purchase or successor in interest will occupy the housing unit as a primary residence; or
2. The lessee is the child, spouse or parent of the former owner; or
3. The lease was not the result of an armsôlength transaction; or
4. The lease requires the receipt of rent that is substantially less than fair market rent of the property (unless governmental subsidy).

To evict a tenant who remains after foreclosure on 90 day notice or more, special information apprising the tenant of various rights must be incorporated into the notice. C.A.R. form, Notice of Termination of Tenancy within One Year After Foreclosure (Giving Tenant At Least 90 Day to Vacate) (Form NTAF) may be used for this purpose. It provides both the notice and the special information in a single form.

However, when notice terminating tenancy within one year after foreclosure gives the tenant less than 90 daysônotice, then the special information must be provided as a cover sheet. In this case C.A.R. form, *Additional Information Regarding Termination of Tenancy within One Year After*

Foreclosure (Cover Sheet Attached To Notice (C.A.R. Form NTT) Giving Tenant Less Than 90 Day to Vacate)(Form NTAF) may be used for this purpose.

Where a party to the note is occupant, such as where there is a deed of trust and the homeowner is in the property, then none of these rules apply (Cal. Code of Civ. Pro. § 1161b(d). In such circumstances, a 3-day notice is required to evict the borrower/homeowner, and a 30-day notice is required to evict other tenants or subtenants residing at the property with the borrower/homeowner.

The above residential tenant protections expire at the end of 2019. Unless extended, the current 90 day notice period will revert to a 30 day notice period under Cal. Civ. Code § 1161a for residential month to month tenancies.

See also the C.A.R. Legal Q&A, Foreclosing on Rental Property.

The landlord with a Section 8 tenant must give the tenant at least 90-days notice to terminate the tenancy (Cal. Civ. Code § 1954.535).

Tenant Terminating the Tenancy

A tenant giving notice to terminate a periodic tenancy must give written notice for a period at least as long as the term of the periodic tenancy prior to the proposed date of termination (Cal. Civ. Code § 1946.1(b).) In other words, if the tenant is in a month-to-month tenancy, she/he must give 30-day notice to terminate. This notice may be given at any time. For example, if the tenant gives notice to terminate on March 9th, then the tenancy terminates April 9th, regardless of when rent is due or when the tenant first took possession.

If a tenant receives a 60-day termination notice from the landlord, the tenant is still able to vacate earlier by delivering their own 30-day notice.

Landlord's Notice of Termination of the Tenancy

The termination notices must be given in the manner prescribed in California Code of Civil Procedure Section 1162 or by sending a copy by certified or registered mail (Cal. Civ. Code § 1946.1(f)). C.A.R. standard form NTT, "Notice of Termination of Tenancy," may be used for this notice.

The procedure for giving the notice is as follows:

1. By delivering a copy to the tenant personally; or,
2. If he or she is absent from his or her place of residence, and from his or her usual place of business, by leaving a copy with some person of suitable age and discretion at either place,and sending a copy through the mail addressed to the tenant at his or her place of residence; or,
3. If a place of residence and business cannot be determined, or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property (e.g., on the door of the rental property), and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service on a subtenant may be made in the same manner.

(Cal. Code Civ. Proc. § 1162.)

Q 46. ***How can a landlord terminate the tenancy of a lodger living in a room of an owner-occupied dwelling?***

A If the tenancy of the lodger is on a periodic basis (e.g., week-to-week or month-to-month) within the dwelling unit occupied by the owner, it may be terminated by either party by giving written notice to the other of his or her intention to terminate the tenancy at least as long as the term of the tenancy (e.g., 30-days' notice for a month-to-month tenancy). The notice shall be given in a manner prescribed in Section 1162 of the Code of Civil Procedure (see Question 44 for a description) or by certified or registered mail, restricted delivery, to the other party, with a return receipt requested. (Cal. Civ. Code § 1946.5(a).)

At the end of the period in the notice of termination, any right of the lodger to remain in the dwelling unit (or any part of it) is terminated by operation of law. The lodger's removal from the premises may be effected pursuant to the provisions of Section 602.3 of the Penal Code or other applicable provisions of law. (Cal. Civ. Code § 1946.5(b).)

"Lodger" means a person contracting with the owner of a dwelling unit for a room or room and board within the dwelling unit personally occupied by the owner, where the owner retains a right of access to all areas of the dwelling unit occupied by the lodger and has overall control of the dwelling unit. (Cal. Civ. Code § 1946.5(c).)

Note that Section 1946.5 applies only if the owner has one lodger in his or her home and not where there are two or more lodgers (Cal. Civ. Code § 1946.5(d).)

This law would seem to give an owner with a lodger a way in which to bypass the unlawful detainer procedure by performing a citizenôs arrest which means that the lodger can be ejected using reasonable, but not deadly, force. However, an agent should never undertake this action, nor should they advise the landlord to do so. Instead, it is suggest that you call the police to assist you in removing the lodger. Be forewarned that local police will often decline to get involved, leaving the landlord with having to go through the unlawful detainer process.

X. ABANDONED PERSONAL PROPERTY AND ABANDONED TENANCY

Q 47. ***If a tenant leaves behind personal property after moving out, what should the landlord do?***

A Landlords and property managers must familiarize themselves with the law concerning disposal of a tenant's abandoned property. It is illegal for a landlord to remove the tenant's personal property from the premises before the tenancy is legally terminated. After the tenant has vacated the property and a landlord discovers personal property left behind, the first thing to do is try to contact the tenant. In most instances, the tenant will promptly return and pick up these belongings.

If the tenant fails to retrieve the belongings or if the tenant cannot be located, please review the detailed procedures and form of required notice in the C.A.R. Legal Q&A, Abandoned Personal Property: Disposition of Items Left Behind After Termination of a Tenancy.

Also, the C.A.R. has a Sample Letter called the ñAbandoned Personal Property (Residential) Letterò (Sample Letter form ñAPPRò) and can be found on ZipForm in the CAR Sample Letters library. This letter can be used to assist an owner or property manager in legally disposing of personal property left behind by a tenant.

Q 48. ***What should a landlord do if s/he believes that the tenant has abandoned the property?***

A Occasionally tenants leave rented property without notifying the landlord. This can pose a problem when the tenant has not been in contact for some time, and has left personal property on the premises or has failed to discontinue utilities. The rental property may even appear vacant.

If the landlord reasonably believes that the tenant has abandoned the premises, there is a legal procedure that the landlord should undertake in order to terminate the tenancy in a legal manner.

After the rent has been due and unpaid for at least 14 consecutive days and the landlord in good faith believes the premises are abandoned, the landlord may give the tenant a written notice called "Notice of Belief of Abandonment" (Cal. Civ. Code § 1951.3(b)). It must be personally delivered to the tenant, mailed to the tenant's last known address, or in the last resort, sent to an address where the landlord reasonably believes the tenant is residing (Cal. Civ. Code § 1951.3(c)).

The notice must state that the tenancy will be terminated unless the tenant provides written notice of an intent not to abandon the premises. The termination date must be at least 15 days after the date of personal delivery, or at least 18 days after the date mailed. (Cal. Civ. Code § 1951.3(b).)

The C.A.R. Sample Letter ñBelief of Abandonment Residential (Real Estate) Letterò(Form BOAR) may be used for this purpose.

The rental property will not be deemed to have been abandoned by the tenant if the tenant is able to prove any one of the following:

1. The rent was not due and unpaid for 14 consecutive days at the time notice was given by the landlord;
2. The landlord was not reasonable in his or her belief that the property had been abandoned at the time of the notice;
3. Prior to the dates specified in the notice, the tenant gave written notice of his or her intent not to abandon the premises; or
4. All or a portion of the rent due and unpaid was tendered and accepted by the landlord during the period commencing 14 days before the notice was given and ending on the date the tenancy would have terminated pursuant to the notice.

(Cal. Civ. Code § 1951.3(e).)

Where the C.A.R. Sample Letter ñNotice of Belief of Abandonment Residential (Real Property) Letteròis given, the landlord my ï but need not --at the same time give the C.A.R. Sample Letter ñAbandoned Person Property (Residential) Letteròfor the purpose of legally disposing of any personal property that the tenant left behind. See Question 46 above.

Q 49. ***What happens if the tenant tells the landlord that s/he is abandoning the rental property?***

A Typically, abandonment will terminate the tenancy. The landlordôs remedy is to re-enter and re-let the premises, and then seek to recover any difference between contract rent and reasonable rent

after the breach. The landlord should be careful not to mutually agree to terminate the lease and thereby excuse the tenant from lost rent, unless that is what the landlord intends.

Q 50. *Is the tenant obligated to pay rent after abandoning the property, and is the landlord required to make a good faith effort to re-let the property?*

A In most circumstances, yes.. Typically a landlord must attempt to mitigate damages caused by the tenant's abandonment. This includes initiating the procedure described above for establishing lawful abandonment of the lease, and then attempting to find a new tenant to occupy the premises without undue delay. Under these circumstances, a landlord may be able to recover the damages (i.e., rents) which were unavoidable despite reasonable attempts to mitigate. (Cal. Civ. Code § 1951.2.)

However, a landlord does not necessarily have to attempt mitigation. If, the lease allows the tenant to assign or sublet or is silent on the matter, and the lease specifies that the landlord intends to continue the lease in effect after the tenant's abandonment pursuant to Civil Code Section 1951.4, then the tenant will still be responsible for rent as it becomes due. In this situation, the tenant would bear the burden of finding an assignee or subtenant. In any event, the tenant would have to continue to pay rent. (Cal. Civ. Code § 1951.4.).

This type of provision is mostly found in commercial leases. For example, C.A.R.ôs Commercial Lease Agreement (Form CL) has such a provision in paragraph 25. If the landlord is electing to hold the lease open then the landlord should be careful to not ñaccept surrenderò of the lease. Since doing so may constitute a termination of the landlordôs ability to hold the tenant liable for damages. To avoid this, the landlord could send a letter to the tenant indicating the election to continue the tenancy, hold possession open for the tenant and that landlord is not accepting surrender.

XI. THE EVICTION PROCESS

Q 51. *When may a landlord lawfully evict a tenant?*

A A landlord may evict a tenant who refuses to pay rent or otherwise abide by any of the terms or covenants in the rental agreement. A landlord may also evict a tenant who refuses to move at the end of a tenancy. (Cal. Code of Civ. Proc. § 1161.)

Buyers have the right to evict sellers who refuse to move after escrow closes where occupancy is promised.. And a purchaser at a foreclosure sale may evict a former owner who refuses to move after a foreclosure . (Cal. Code of Civ. Proc. § 1161a.)

After notice is given, it will be necessary to obtain a judgment from a court of law before a sheriff has the legal authority to physically remove a tenant. This form of court proceeding is referred to as anunlawful detainer action. Because eviction causes tenants to forfeit their rights, landlords are required to comply with certain procedures to the letter of the law.

Typically landlords initiate unlawful detainer actions when the tenant is unwilling or unable to pay rent. If a satisfactory solution cannot be reached with the tenant, the landlord may consider initiating the unlawful detainer action.

See the C.A.R. Legal Q&A, Unlawful Detainer: the Eviction Process in California.

Q 52. *How does the eviction process work?*

A Successful eviction of a tenant who is delinquent in rent or violating a covenant in the agreement requires three things:

1. Service of the "Notice to Pay or Quit" or "Notice to Cure Default or Quit";
2. Filing of the unlawful detainer action if full payment is not made or the default is not cured within the three-day period (or a longer period if specified in the lease);
3. Obtaining a judgment giving the landlord lawful possession of the property.

(Cal. Code of Civ. Proc. § 1161.)

For more details, see the C.A.R. Legal Q&A, Unlawful Detainer: the Eviction Process in California.

Q 53. *What is a "Notice to Pay or Quit"; a "Notice to Perform Covenant (Cure) or Quit"; or a "Notice to Quit"?*

A Commonly known as the "Three-Day Notice," the "Notice to Pay or Quit" constitutes the first step in the eviction process. The landlord must serve the tenant with notice that s/he has three days to pay the rent or vacate the premises. (Cal. Code of Civ. Proc. § 1161(2).) C.A.R. standard form, Notice to Pay Rent or Quit (PRQ) may be used.

Similarly, a Three-Day Notice to Perform Covenant (Cure) or Quit may be given to a tenant who is violating another condition or covenant in the lease or rental agreement such as conducting a business out of the premises (Cal. Code Civ. Proc. § 1161 (3)).

There are also a number of reasons enumerated in the law for which a tenant may be evicted without any opportunity to cure (Cal. Code of Civ. Proc. § 1161(4)).These ñnon-curableò violations include unpermitted assignment or subletting, ñwaste,ò nuisance or unlawful use or purpose. To evict on this basis, a landlord may serve C.A.R. form, Notice to Quit (Form NTQ).

Q 54. *What is the proper procedure for serving the "Three-Day Notice"?*

A The Three-Day Notice may be served by the landlord or by any person over 18 years of age.

A copy of the notice should first be attempted to be delivered to the tenant personally. (Cal. Code of Civ. Proc. § 1162.)

However, if the tenant is absent from his premises and his workplace, the notice can be delivered to a person of "suitable age and discretion" at either the tenant's home or workplace, and an additional copy must be mailed to the tenant's home. This method is known as "substituted" service.

California Code of Civil Procedure Section 1013(a) normally adds five days for response to a notice regarding a civil proceeding that has been mailed--instead of personally delivered--to a California address. However, Section 1013(a) does not extend the time to respond to a three-day notice made pursuant to Sections 1161 and 1162 (*Walters v. Meyers*, 226 Cal. App. 3d Supp. 15, 277 (1990));*Losornia v. Motta*, 67 Cal.App. 4th 110 (1998). . The unlawful detainer provisions establish a summary procedure to allow landlords to remove holdover or defaulting tenants from possession in

an expedited manner. According to *Walters*, "it would be wholly inconsistent with the summary nature of unlawful detainer actions to extend the time period for responding to a three-day notice absent a clear expression from the Legislature."

If all else fails, the landlord can post the notice conspicuously on the property, serve a copy to anyresident or the property, and mail another copy to the rented address. This method is known as "conspicuous" service. (Cal. Code of Civ. Proc. § 1162.) Posting a notice on the door alone does not provide sufficient notice to a tenant, but posting together with mailing the notice does (Walters v. Meyers, 226 Cal. App. 3d Supp. 15, 277 (1990)).

Finally, in counting the "three" days, the date of service is not counted. If the last day falls on a weekend or a holiday, then it is also not counted. (Cal. Code of Civ. Proc. § 12; Lamanna v. Vognar, 17 Cal. App. 4th Supp. 4, (1993)).

Q 55. ***Does the landlord have to accept the tenant's offer to pay rent within those three days?***

A Yes. If the tenant offers to pay full rent within three days of receiving the notice the landlord must accept the payment and the tenant is permitted to remain (Cal. Code of Civ. Proc. § 1161, § 1161.5; Downing v. Cutting Packing Co., 183 Cal. 91 (1920)). Generally, a landlord can refuse payment by check rather than in cash or by money order. However, if the tenant has always tendered a check in the past, the landlord must accept the check unless the tenant has been notified otherwise in advance.

There is a question of whether a landlord must accept rent within eight days (three days plus an extra five for mailing) if the landlord resorted to "substituted" or "conspicuous" service as described in the previous question. The Losornio case, above, answered this question clearly: a landlord does not have to accept rent or wait an additional five days before filing the unlawful detainer.

However, a landlord should be cautioned to seek their own legal counsel should they choose to refuse the full amount of rent if tendered after the three day notice period has expired where service of the notice was made by other than by personal service. Other defaults may be similarly "cured" within this three-day period.

If, however, the tenant offers partial payment, the landlord can properly refuse to accept and continue the eviction process (Cal. Civ. Code § 1486). If a residential landlord accepts partial payment of rent, it may invalidate the three-day notice and prevent the landlord from commencing the unlawful detainer action.

However, partial payment of delinquent rent by a commercial landlord with proper written notice to the tenant that the landlord is not waiving the right to proceed with the unlawful detainer will not invalidate the three-day notice (Cal. Code of Civ. Proc. § 1161.1(b); *Woodman Partners v. Sofa U Love*, 94 Cal. App. 4th 766 (2001)). Note, there is no similar statute giving residential landlords the same right to accept partial rent and continue with the unlawful detainer action.

Finally, if the rent is not paid within three days, or if the landlord refuses to accept partial payment,and if the tenant has not vacated the premises, the landlord can then file an unlawful detainer action to terminate the tenancy and recover possession. Before filing this lawsuit, the landlord should seek legal advice.

XII. FORECLOSURE, BANKRUPTCY AND OTHER ISSUES

Q 56. *Can a landlord demand that the tenant pay rent in cash?*

A No. The law prohibits a landlord or a landlord's agent from requiring cash as the exclusive payment of rent or deposit of security, except following a tenant's failure to pay rent where the tenant bounced a check or stopped payment on a check. In that circumstance the landlord 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. (Cal. Civ. Code § 1947.3)

One provision, in particular, "the issuance of a money order or a cashier's check is direct evidence only that the instrument was issued," is intended to protect landlords from the situation whereby a tenant claims in court that he/she paid the rent when in fact the tenant had a money order issued, but never paid the landlord and simply cashed the money order himself or herself (Cal. Civ. Code § 1947.3).

Q 57. *What happens if a tenant files for bankruptcy?*

A Filing for bankruptcy triggers an "automatic stay." This means that the landlord temporarily can do nothing to enforce the lease. For example, the landlord cannot serve a three-day notice, file an unlawful detainer action, or even continue with a pending action against the tenant. (11 U.S.C. § 362(a).) However, the bankruptcy code permits the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against the debtor/tenant of residential property so long as the lessor had obtained a judgment for possession of the property before the date of the filing of the bankruptcy petition. (11 U.S.C. § 362(b)(22).)

In addition, the law also permits an eviction action that seeks possession of the residential property based on endangerment of the property or the illegal use of controlled substances on the property, but only if the lessor files with the court a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered the property or illegally used or allowed to be used a controlled substance on the property. (11 U.S.C. § 362(b)(22).)

Generally the landlord must file a "Complaint for Relief from Automatic Stay" in the tenant's bankruptcy and obtain bankruptcy court approval before proceeding with the eviction. Bankruptcy law is very complex. When faced with this issue, the landlord should consult a bankruptcy attorney for advice and assistance.

Q 58. *Does a lender intending to start the foreclosure procedure have any responsibilities to a tenant?*

A Yes. A mortgagee, trustee, beneficiary, or authorized agent on the deed of trust when posting a notice of sale is required to also post a statutory notice (in 6 different languages) about the pending foreclosure. This notice must also be mailed to the tenant (and also to the owner/occupant) addressed to the "Resident of property subject to foreclosure sale." For a copy of this notice, click here. (Cal. Civ. Code § 2924.8(a).) This law is set to expire on December 31, 2019.

Q 59. *How does foreclosure affect a tenant's rights?*

A The purchaser at a trustee's sale or grantee in a trustee's deed acquires title free and clear of all rights of the landlord or the landlord's successors (owner of the property being foreclosed). At the time of foreclosure, any interest in the property held by third persons, such as tenants, is determined by the "priority" of the tenant's interest. The basic rule of priority is that interests created earlier get higher priority.

Lease Recorded after the Foreclosing Deed of Trust

A lease that was recorded after the deed of trust is subordinate to the deed of trust (*Dover Mobile Estates v. Fiber Form Products*, Inc. 220 Cal. App. 3d 1494 (1990); *Miscione v. Barton Development Co*., 52 Cal. App. 4th 1320 (1997)). Since the deed of trust has priority over the subsequent lease, the lease and the tenant's right of possession is terminated by the foreclosure of the deed of trust. The purchaser at the foreclosure sale can evict the tenant (as well as a former owner) by an unlawful detainer action.

Effective until December 31, 2019, with certain exceptions the rights of a residential tenant in a fixed-term lease must be honored. If the exceptions apply, the purchaser must serve the residential tenant with a written notice to quit giving the tenant 90 days (Cal. Code Civ. Proc. § 1161b(a)). On the other hand, the purchaser need only provide the former owner (or party to the note) living in the property with a written 3-day notice to quit (Cal. Code Civ. Proc. § 1161a(b)). Local ordinances can affect this result. Parties should consult their own counsel to obtain advice regarding local rent control requirements.

Please see Question #44 above for a more complete explanation of required notices when evicting a residential tenant after foreclosure.

Lease Recorded before the Foreclosing Deed of Trust

On the other hand, a lease that is recorded before the deed of trust has priority over the lien of the deed of trust and is not affected by a foreclosure of the junior deed of trust. The title of the purchaser from a foreclosure sale is subject to the lease and the tenant's right of possession under the lease. (*Vallely Investments, L.P. v. BancAmerica Commercial Corp*., 88 Cal. App. 4th 816 (2001).) Commercial leases should typically be recorded to remain in effect after a foreclosure.

Residential leases are typically not recorded. The lien of the deed of trust has priority over any priorunrecorded, unknown lease in excess of one year. That means if the beneficiary (of the deed of trust) has implied notice of the lease as a result of the lessee's possession of the premises, then the prior unrecorded lease retains priority. The open and visible occupation of property by a tenant constitutes notice of his or her leasehold interest to a subsequent purchaser who, thus, receives his or her title interest or lien subject to the *possessory* rights of the tenant. (*Standard Oil Co. v. Slye*, 164 Cal. 435 (1913).) (R-Ranch Mkts. #2, Inc. v Old Stone Bank 16 CA4th 1323 (1993) -- where a tenant under a superior lease who was not visibly in possession of the property and where the lease was not recorded, the purchaser at the foreclosure sale took the property free of the lease as a bona fide purchaser).

Unrecorded leases of one year or less are not affected by the foreclosure since they are not subject to the priorities rule (Cal. Civ. Code § 1214). In other words, the purchaser at the foreclosure sale takes the property subject to the lease. However, when the lease term has expired, then the landlord may exercise normal landlord rights.

Month-to-Month Tenancy after Foreclosure

Effective until December 31, 2019, a month-to-month tenant (or subtenant) in possession of a rental*housing unit* at the time a property is sold in foreclosure must be given 90 daysô written notice to quit. Please see Question #44 above for a more complete explanation of required notices when evicting a residential tenant after foreclosure.

A commercial tenant is only entitled to a 3 day notice after the property is sold by foreclosure where title is ñduly perfectedò (CCP 1161a(b)).

Section 8 Tenancy after Foreclosure

The general protections given to all residential tenants after foreclosure apply to Section 8 tenants as well. Effective until December 31, 2019, a month-to-month tenant (or subtenant) in possession of a rental housing unit at the time a property is sold in foreclosure must be given 90 daysô written notice to quit. Please see Question #44 above for a more complete explanation of required notices when evicting a residential tenant after foreclosure.

Additionally, specific Section 8 notice and termination requirements would likely remain the same even after foreclosure since such federal Section 8 rules have been held to preempt state law (*EMC Mortgage Corp. v Smith*, Mass. Boston housing court Case No. 95-SP-04794 (Jan. 4, 1996)).

See also the Legal Q&A, Foreclosing on Rental Property.

Q 60. *Do tenants subject to domestic violence or other types of abuse have any special rights?*

A There are two laws that apply. The first allows a protected tenant to break a lease on 30 day notice. The second pertains to the obligation of the landlord to accommodate a protected tenant by changing locks.

Right of Protected Tenant to Break Lease

The law authorizes a tenant to notify the landlord in writing that he/she or a household member, as defined, was a victim of an act of domestic violence, sexual assault, human trafficking, abuse of an elder or dependent adult or stalking, as defined, and intends to terminate the tenancy. It requires the tenant to attach a copy of a temporary restraining order or emergency protective order, or a copy of a specified written report by a peace officer to the notice.

It authorizes the tenant to quit the premises and the tenant is discharged from payment of rent for any period following 30 days from the date of the notice, or as specified. Existing law on the security deposit still applies. If within the 30 days after notice is given under this section and the premises are rented to another, the rent for the 30-day period must be prorated.

The notice to terminate the tenancy must be given within 180 days of date the order was issued or the report was made, or as specified.

This law also provides that other tenants, except the household member who is a victim of domestic violence, sexual assault, human trafficking, abuse of an elder or dependent adult, or stalking, and members of that person's family, are not released from their obligations under the rental agreement.

For purposes of the unlawful detainer law, if a person commits specified acts of domestic violence, sexual assault, or stalking against another tenant or subtenant on the premises, there is a rebuttable

presumption affecting the burden of proof that the person has committed a nuisance on the premises unless the victim or a member of the victim's household has not vacated the premises.

(Cal. Civ. Code § 1946.7, Cal. Code of Civ. Proc. § 1161.)

Requirement to Change Locks or Permit Tenant to Change Locks

The law also requires the landlord to change the locks in certain circumstances or failing that permit the tenant to do so. There are two circumstances: one where the protected tenant and a person subject to a restraining order live together in the same dwelling, and one where they do not.

Where a protected tenant and a person subject to a restraining order live within the same dwelling unit, then the landlord must change the locks within 24 hours after the tenant gives the landlord a copy of a court restraining order excluding the retrained person from the dwelling unit. ñLocksò means any exterior lock that provides access to the dwelling.

If the landlord does not change the locks within 24 hours, then the tenant may do so without the landlordôs permission. In such case the tenant must notify the landlord within 24 hours that the locks have been changed and provide the landlord with a key. The new locks must be at least similar to or better in quality than the old, and must be installed in a workmanlike manner. In either case, the excluded person is still liable under the lease with all other tenants.

Where the restrained person does not live in the same dwelling unit, then the landlord must change the locks within 24 hours after being give a copy of a court restraining order or even a police report where the police report states contains an allegation of domestic violence, sexual assault or stalking. If the landlord fails to change the locks then the tenant may do so. Again the tenant must adhere to all of the aforementioned requirements.

Cal. Civ. Code §§ 1941.5 and 1941.6

Q 61. *Do landlords have any special responsibilities regarding abandoned animals?*

A A person or private entity that discovers an abandoned animal in or about the premises of real property that has been vacated upon, or immediately preceding, the termination of a lease or other rental agreement or foreclosure of the property to immediately contact animal control for the purpose of retrieval and care.

The law provides, in part, that:

- Any person or private entity with whom a live animal is deposited shall immediately notify animal control officials for the purpose of retrieving the animal.
- The person in possession of the abandoned animal is subject to all local ordinances and state laws that govern the proper care and treatment of those animals.
- The person or private entity, or the successor property owner, that notifies animal control officials to retrieve the animal shall not be considered the keeper of the animal.

(Note: This law impacts landlords as well as banks with REO properties and their real estate agents.)

(Cal. Civ. Code §§ 1815, 1816, 1981.)

Q 62. *Where can I find information about local rent control ordinances?*

A Rent control on residential properties has been legally upheld as within the police power of local governments, but there are restrictions placed on the regulation of residential rents. (*Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129 (1976). Regulation of commercial rents, however, is prohibited by state law (Cal. Civ. Code § 1957.27).

For specific rent control information, you should contact the local rent stabilization board for the applicable city. For more information on rent control in general, including links to rent control information on municipal websites, please go to the Rent Control webpage, under Landlord/Tenant issues in the Real Estate Resources section of *Legal Online*, Rent Control Information.

For information concerning the restrictions placed on rent control, see the C.A.R. legal article,Residential Rent Control Relief Law.

Q 63. ***How does a major disaster, such as an earthquake, impact tenants and landlords?***

A The answer partly depends on whether there is a provision in the lease addressing this scenario. The C.A.R lease agreement (ñResidential Lease Agreementò(Form LR)) explains the rights of both the landlord and tenant when the property is either totally or partially damaged as a result of natural disaster, fire, earthquake, accident or ñother casualty.ò It states that in the event the property is rendered totally or partially uninhabitable, either party may terminate the agreement by written notice, and the rent must be abate. See paragraph of 32 of the LR.

If neither the landlord nor the tenant opts to terminate the lease then under the C.A.R. lease agreement, the landlord has the right to request that the tenant temporarily vacate, if necessary, for a reasonable period to complete repairs. During this time the tenant is entitled to a credit for rent equal to the per diem rent.

If there is no provision in the lease agreement addressing destruction, and the dwelling has been totally damaged by natural disaster, the rental relationship ceases to exist (Cal. Civ. Code § 1933(4)). The landlord will have to return any applicable security deposits, however the tenant is not entitled to reimbursement for rent payments that have already been made (Pedro v Potter, 197 Cal. 751 (1926).

However, if the dwelling is only partially destroyed, the law is unclear. The tenant may have the right to terminate the lease because of the destruction of an important aspect of the premises (Civil Code § 1932(2)). But if not, then the landlord may be able to keep the lease in force while repairs are made.

The Porter Ranch Gas Leak

Itôs unclear whether a property made uninhabitable due to the Porter Ranch gas leak would likely qualify as partial or total destruction under the C.A.R. residential lease or even under statute (CC 1933(4)), since the gas isnôt ñdestroyingò the property. Itôs only rendering it unusable for the intended purpose.

Therefore, the question arises whether the landlordôs duty to maintain habitability applies where landlord has no control over or ability to remediate the problem. The duty to maintain the land in a reasonably safe condition is a non-delegable duty in California (Srithong v Total Inv. Co. (1994) 23 CA4th 721). Outside of California it has been held that the landlord may be responsible for breach of the implied warranty of habitability even when the landlord was not at fault in causing the defect or in

failing to repair it. (McGuinness v Jakubiak (NY sup Ct 1980) 431 NYS2d 755; Park W. Mgmt. Corp. v Mitchell (1979) 418 NYS2d 310; Jarrell v Hartman (Ill App Ct 1977) 363 NE2d 626).

Nonetheless, to hold the landlord liable for failure to maintain habitability where it is impossible to do so would seem to raise issues involving failure of implied conditions, failure of consideration, impossibility, impracticality or frustration of purpose, anyone of which may provide the landlord with a contractual defense to non-performance.

For more information, please see the C.A.R. legal article, Earthquake or Other Disaster-Related Landlord-Tenant Issues.

Q 64. ***Does the residential landlord have any responsibility to the tenant regarding regular pest control work?***

A Yes. A landlord of residential property must provide each new tenant with a copy of the notice provided by a registered structural pest control company, pursuant to California Business & Professions Code § 8538, if the landlord has entered into a contract for periodic pest control work (Cal. Civ. Code § 1940.8).

Additionally, a special statutory notice must be given to a tenant or possibly tenants of adjacent units when the landlord or the landlordôs agent applies any pesticide without a licensed pest control operator. (Cal. Civ. Code § 1940.8.5)