



## **Rights of Tenants:**

### **The 30 or 60 Day Termination Notice**

#### **WHEN CAN MY LANDLORD GIVE ME A 30-DAY or 60-DAY NOTICE TO MOVE OUT?**

##### Ending a Periodic Tenancy:

State laws allow a landlord to terminate a periodic tenancy (usually a “month-to-month” tenancy) by serving a written sixty-day or thirty-day notice. If your written lease is not for a set period of time such as six months or one year, or if you have no written rental agreement, the law assumes you have a periodic tenancy. If you have occupied the home for more than one year, then the notice must be served at least **sixty days** before the tenancy terminates. (Civil Code § 1946.1(b)). If any tenant or resident has lived there for less than one year, then the notice must be served at least **thirty days** before the tenancy terminates. (Civil Code § 1946.1(c)). Also, thirty days’ notice may be sufficient regardless of the length of your tenancy if the unit is a single-family home, and the home is being sold to a new owner wanting to live in the property for at least one year. (Civil Code § 1946.1(d)).

Usually a landlord who serves a 30-day or 60-day notice does not have to state any reason for ending your tenancy in the notice. There are some exceptions noted below.

##### Fixed Term Leases:

The landlord, or his/her agent, does not have to give any notice to end a fixed term lease. The lease and your tenancy automatically terminate at the end of the lease period, and the landlord is not required to give you further notice if s/he wants you to move out. A landlord can terminate a fixed term lease *before it ends* if you violate the lease by failing to pay rent or committing other serious lease violations.

##### Subsidized Housing and Rent Control Cities:

If you rent in a government-subsidized housing program such as HUD housing, BMR/LIHTC units, or have a Section 8 voucher, additional laws may protect your rights as a tenant. Local rent stabilization laws also can provide additional protections for tenants. (In San Mateo County, the only city with rent and eviction control is East Palo Alto).

For these types of housing, the landlord is often required to have “good cause” or “just cause” to terminate a tenancy. Each type of housing program is governed by its own laws which identify situations considered “good cause” for eviction and the due process required to evict. A 90-day notice is required to terminate a Section 8 voucher tenancy.

##### If the Landlord has Good Cause to Evict:

If you have violated your lease or if you have not paid your rent, your landlord can give you a notice to terminate your tenancy with as little as three days’ notice. These notices must specifically state the reason for the eviction, and give the tenant an opportunity to “cure” a violation when possible.

### **WHAT IF MY LANDLORD GIVES ME A 30 or 60-DAY NOTICE BECAUSE I COMPLAINED ABOUT SOMETHING OR IS DISCRIMINATING AGAINST ME?**

A landlord may not evict you to punish you, or “retaliate” against you, for exercising your legal rights. The law presumes that the action was retaliatory if the landlord raises your rent, reduces services or tries to evict you within 180 days (six months) after you have exercised a lawful right such as requesting repairs or contacting code enforcement. If the landlord tries to evict you in this situation, you can claim retaliation as an affirmative defense in an unlawful detainer (eviction) proceeding.

It is also illegal to discriminate against tenants based on: race\ethnicity, disability, religion, gender, sexual orientation, marital status or familial status (having children). A person with a disability is entitled to an “accommodation” before being evicted for reasons related to the disability. A disabled tenant must request a reasonable accommodation and then the landlord is required to negotiate the request.

### **HOW MUST MY LANDLORD OR HIS AGENT SERVE THE 30 or 60-DAY NOTICE?**

The law allows a landlord to serve the notice in the following ways:

1. Personally handing it to the tenant; or
2. Leaving a copy at the tenant’s home with another person, or posting it on the door, and then also mailing a copy; or
3. Mailing the notice by certified or registered mail.

Beware that most judges will ignore technical problems with *how the notice was served*, so long as the tenant actually received the notice. Defective service rarely defeats the eviction.

### **WHAT IF MY LANDLORD ACCEPTS MY RENT PAYMENT AFTER GIVING ME A 30 or 60-DAY NOTICE?**

The tenant must pay rent until the notice period expires. If the landlord intentionally accepts rent after the expiration of the notice, this might constitute a withdrawal or waiver of the notice. If the landlord still wants you to move after waiving a prior notice, a new written 30/60-day notice may then be required.

### **WHAT HAPPENS IF I DON’T MOVE BY THE END OF THE NOTICE PERIOD?**

A landlord cannot force you to move until s/he has obtained a court order. A landlord may begin an “unlawful detainer” case in court if you have not moved when the notice expires. An “unlawful detainer” case is an eviction lawsuit in which the landlord seeks the court order required to complete an eviction. After receiving the court papers called the Complaint--Unlawful Detainer and Summons, you must respond within five (5) calendar days by filing your response papers with the court. Include weekends when counting the five days (but not court holidays). As long as you file a timely response with the Court, you will have court dates scheduled no sooner than three weeks later, with an opportunity to negotiate a settlement and/or tell your side of the story.

If you fail to answer within five days of being served, a default judgment will be entered against you, which means you have lost the case without the opportunity to tell your side in court. If you lose the case in court or by default, the sheriff will post a Notice to Vacate on your door giving you about five more days to move. If you do not move, the sheriff will come out and *physically remove you* from the premises and lock the door.

**FOR HELP WITH AN UNLAWFUL DETAINER, CALL LEGAL AID AT (650)517-8911.**