California Landlord-Tenant Law Overview

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PART 1. 8:30 am – 8:55 am

Landlord and Tenant Rights and Obligations
Building a Comprehensive Lease
Using an Agent
Avoiding Landlord-Tenant Problems

I. Landlord and Tenant Rights and Obligations

A. Landlord Rights:

In simplest terms, a Landlord has a right to collect rent and the right to insist that the tenant not be, or create, a nuisance at the premises, damage the premises or violate lease covenants. The details of these rights will be further discussed in the Section "Building a Comprehensive Lease." A tenant's failure to pay rent, their commission of a nuisance, or their breach of any other material covenant of the lease, is sufficient grounds for a notice "to quit" the premises (or in some cases also "to cure" the deficiency).

B. Tenants' Rights:

1. Generally:

As most landlord/lessors know, the residential tenant has *many* rights, most of which can not be 'waived' even if the tenant is willing to agree to do so. While some tenant rights are contained in the lease, most tenant rights are created by statute, local ordinance or case law (judicial opinions that resolve a dispute but also create 'precedent' that governs future similar disputes). Examples can be seen throughout the Cal. Civ. Code, including §§1940, et seq., where it is against public policy for a tenant to waive several statutory rights. (See, e.g., § 1942.5, no waiver of right against lessor retaliation for lessee's asserting rights; § 1942.1, no

waiver of right to habitable premises or the "repair and deduct" remedy for uninhabitable premises; § 1947.3, no waiver of right to pay rent other than with cash; § 1953, no waiver of statutory rights governing security deposits, notice of entry by lessor, future claims against lessor, notices or hearings required by law, statutory duties of care.) (Also, a tenant may not waive her right to a jury trial in a controversy arising between landlord and tenant.)

The following terms are not only read into a lease agreement (even if they are not explicitly stated), but are also "unwaivable", such that a term stating that a tenant gives up these rights will not be enforceable.

a. Implied Warranty of Habitability:

This "imposes upon the landlord the obligation to maintain leased dwellings in a habitable condition throughout the term of the lease." Green v. Sup. Ct. (Sumski) (1974) 10 C3d 616, 619. (Breach will not be found if the landlord substantially complies with statute or the implied warranty.)

Sections 1941 and 1941.1 are the statutory equivalent of the Implied Warranty of Habitability. They deal specifically with such habitability concerns as water supply, heating, electrical and sanitation concerns.

Note: Section 1940 indicates that this chapter refers only to residential "dwelling units", however commercial leases, by express covenant, may impose upon the landlord the warranty of habitability. Breach will not be found if the landlord substantially complies with statute or the implied warranty

b. Implied Covenant of Quiet Enjoyment: This covenant, implied against the landlord in every commercial and residential rental agreement, "insulates the tenant against any act or omission on the part of the landlord, or anyone claiming under him, which interferes with a tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy." Ocean Services Corp. v. Ventura Port Dist. (1993) 15 Cal.App.4th 1762, 1781.

Note: Interference by another tenant in the building may constitute the landlord's breach of this duty, but the same interference created by a tenant in a neighboring building, not being under the landlord's control, does not create a breach.

Note: A landlord's statutory compliance with rules regarding entry for repairs does not breach this covenant. See, Groh v. Kover's Bull Pen, Inc. (1963) 221 CA2d 611, 615.

Note: Commercial leases may expressly waive this covenant. See, Cal. Civ. Code § 3268; See also Kushner v. Home Service Co. (1928) 91 CA 692, 697.

c. Local Laws:

In addition to the various implied rights imposed on residential tenancies by state statutes and case holdings, local law often imposes rights that a landlord must observe regardless of the language of a written lease. These rights generally cannot be waived. Example: Oakland Municipal Code, chapter 8.22, section 8.22.180 "Non-waiverability: Any provision, whether

oral or written, in or pertaining to a rental agreement whereby any provision of this chapter is waived or modified, is against public policy and void."

i. Rent Control: Rent control laws restrain or eliminate the landlord's right to set the rental amount at will, upon proper notice. If the tenancy is covered by such rules, the typical result is that the rent may only be raised once a year, and only in an amount permitted by the administrative body (usually a "rent board", or Rent Adjustment Program, in Oakland). The rent board administers the regulations that accompany such laws. In a typical jurisdiction, such as Oakland or San Francisco, the annual rent increase amount is expressed as a percentage of the Consumer Price Index. Example: From the Oakland Rent Adjustment Program: "The annual CPI increase rate effective July 1, 2013 through June 30, 2014 is 2.1% and can not be implemented earlier than July 1, 2013. Tenants may only be given one increase in any 12-month period, and the rent increase cannot take effect earlier than the tenant's Anniversary Date."

ii. Eviction Control: Most if not all jurisdictions that employ Rent Control also impose eviction restrictions on the tenancy (or else a landlord could always circumvent rent control limitations by simply evicting the tenant and re-letting the property on the open market). To put it simply, a tenancy in a "covered unit" may not be terminated by the landlord unless he or she possesses one of the enumerated "just

causes" to do so. Generally, these reasons fall into two categories - "for cause" grounds and "no-fault" grounds.

- For Cause Grounds: these focus on behavior by the tenant that justifies termination of the tenancy - such as non-payment of rent, breach of a lease obligation, acting as a nuisance, etc.
- No-Fault Grounds: These are based on some act that the landlord initiates, such as an "owner move-in eviction" or removal of the unit from the rental market. Regardless of the ground, however, the stated reason must be the landlord's "dominant motive" for seeking the tenant's eviction. Landlords who violate the eviction control laws by wrongfully evicting a tenant can face substantial financial liability, in some extreme cases risking criminal charges.

2. Disclosure Obligations:

By law, residential leases are required to contain certain disclosures, generally related to health and safety, but also sometimes related to legal rights under the contract. Most of these are based on California or Federal law, but some are jurisdiction specific. Again, this is why you should use the form lease from your local rental association if one is available.

- Common-Area Utilities: landlord must disclose if he has knowledge that a tenant's utility meter serves an area outside of the tenant's unit. This must be explicitly disclosed before the agreement the landlord may be required to execute a mutual written agreement with the tenant for payment by the tenant of the cost of the gas or electric service provided through the

tenant's meter to serve areas outside the tenant's dwelling unit. Cal. Civ. Code, § 1940.9.

- Carcinogenic Material: A landlord with ten or more employees must disclose the existence of known carcinogenic material (e.g., asbestos) to prospective tenants. Prop. 65; Health and Safety Code, §§ 25249.5 – 25249.13.
- Hazardous Substance Disclosure: Landlords who know or have reasonable cause to believe that any release of hazardous substances are located or will be located on the property must give written notice to the tenant. Health and Safety Code, § 25359.7(b).
- Toxic Mold Disclosure: landlords must provide a consumer handbook disclosing the potential risks from exposure to mold, and they must provide written disclosure of if he knows or has reasonable cause to believe that mold exceeds permissible exposure limits. Health and Safety Code §§ 26147(a), 26148(a), (b).
- Lead Paint Warning Statement: For residential property built before 1978, the tenant must be provided with a written Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards, which must include all information on lead-based paint/hazards known by landlord. A Lead Warning Statement must be attached to the lease or incorporated within it. The tenant must be provided with the pamphlet, "Protect Your Family from Lead in Your Home". 24 CFR 35 and 40 CFR 745(F).
- Automatic Renewal: if the lease is to automatically renew, an automatic renewal/extension provision must be set out in bold type, right above the tenant's signature line. Cal. Civ. Code § 1945.5.
- Notice of Negative Credit Report: Landlord's must disclose their intention to report negative credit to a reporting agency. Cal. Civ. Code, § 1785.26.
- Death of Previous Tenant: Landlords must disclose if a tenant died within the unit within the past 3 years. Cal. Civ. Code § 1710.2(a).
- Proposed Demolition: if a landlord applied to a public agency for a permit to demolish the unit, he must give written notice to a prospective tenant before executing an agreement (or a current tenant before applying). Cal. Civ. Code § 1940.6.
- "Megan's Law" Disclosure: Landlord must include the following statement from Cal. Civ. Code, § 2079.10a, informing them of the database of information about criminal sex offenders:

- Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.
- Structural Pest Control Notice: Landlords must give each new tenant a copy of the notice provided by a registered structural pest control company, if a contract for periodic pest control service has been executed. Cal. Civ. Code, § 1940.8.
- Methamphetamine Contamination: If the landlord has been notified by an officer that the property is contaminated by methamphetamine, there are specific disclosure/remediation/record-keeping requirements. Health and Safety Code, §§ 25400.10 – 25400.47.
- Known Munitions Locations: If a landlord has actual knowledge of former federal or state ammunition locations in the neighborhood, he is required to give written notice to prospective tenants. Cal. Civ. Code, § 1940.7.
- Carbon Monoxide Detectors: Landlords for buildings with a "fossil fuel"-burning heater or appliance, fireplace, or an attached garage must install carbon monoxide detectors in each unit. While there is no specific disclosure requirement here, it's a good idea to include a term in the lease that puts the burden on the tenant to maintain them. Health and Safety § 17926.
- Local Disclosures: Below are two example of local laws requiring additional disclosures. You should check your local jurisdiction for additional such disclosures that may apply in your building's location:

  San Francisco Health Code Article 19M -Tobacco Smoke Disclosure: Tobacco Smoke Disclosure Policy will be effective 12/31/2013, and is designed to alert prospective tenants that there could be tobacco smoke drifting from another apartment in the building. If the property is not 100% smoke-free, the landlord must disclose in writing to all applicants who will be offered the apartment areas within the building, including individual apartments, where smoking is optional, prior to entering into a new lease.

  Oakland Rent Adjustment Program Disclosure: "Owners must give each tenant the Notice to Tenants advising them of the existence and scope of the Rent Adjustment Program at the beginning of their tenancy."

Available at:
http://www2.oaklandnet.com/oakca1/groups/ceda/documents/webcontent/dowd009116.pdf

3. Fair Housing:

Fair housing in California is governed by several statutory schemes, including The Civil Rights Act of 1866 (42 U.S.C. §§ 1981 - 1982) ("CRA"), the Fair Housing Act (42 U.S.C. §§ 3601 – 3631) ("FHA"), the California Fair Employment and Housing Act (Cal. Govt. Code, §§ 12900 - 12996) ("FEHA") and the Unruh Civil Rights Act (Cal. Civ. Code., §§ 51, 52), which all apply to renters of residential housing.

- With the application of these various statutory provisions, renters and applicants in California are protected against discrimination on the basis of race, sex, religion, national origin, familial status, disability, marital status, ancestry, sexual orientation, source of income, age and medical condition.
- Exception: Discrimination does not include the refusal to rent a portion of an owner-occupied single family home to a renter, provided that no more than one renter is to live within the household. Cal. Govt. Code, § 12927(c). (However, discriminatory notices, statements and advertisements remain illegal in this context.)
- Exception: It is permissible to advertise housing for only one gender, if the lessor will be sharing living areas in a single dwelling unit with the renter. Cal. Govt. Code, § 12927(c).
- Exception: Discrimination based upon criminal history is arguably not invidious discrimination but rather a valid way to evaluate the prospective tenant's likelihood of causing harm to other tenants. California case law holds that a landlord has a duty of due care to protect tenants from foreseeable harm from another tenant. *See*, Rosales v. Stewart (1980) 113 CA3d 130. The FHA provides that a landlord may reject an

applicant "whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." 42 U.S.C. § 3604(f)(9). This will be a fact-based determination.

- Exception: A landlord may discriminate if the discrimination is based on a legitimate business interest. *See,* In re Cox (1970) 3 C3d 205, 212, 217. However, note that while minimum income standards were upheld by the California Supreme Court in 1991 as a legitimate business interest that allows a landlord to discriminate against prospective tenants based upon income level, (*see,* Harris v. Capital Growth Investors XIV, (1991) 52 C3d 1142.), discrimination based on a tenant's *source* of income is not protected. *See,* Cal. Govt. Code § 12955). This includes the applicant's occupation or appearance. Courts have held that the Unruh Act prohibits all "arbitrary" discrimination. As stated in the case *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal 3d 721 725-726: an individual "... cannot be excluded solely because he falls within a class of persons whom the owner believes is more likely to engage in misconduct than some other group. Whether the exclusionary policy rests on the alleged undesirable propensities of those of a particular race, nationality, occupation, political affiliation, or age, in this context the Unruh Act protects individuals from such arbitrary discrimination."

II. Building a Comprehensive Lease

1. Form Leases: For a standard residential tenancy, the best advice is to use a form Residential Lease Agreement from a knowledgeable local landlord oriented organization, since such organizations tend to stay informed about local and state tenancy laws and developments, and incorporate changes into their standard form lease. The most common

area of incomplete leases, such as form leases from the internet or even forms from state-wide landlord organizations are provisions implied or required by municipal laws. However, even with a complete, locally oriented lease, there are provisions the careful landlord will pay particularly attention to:

i. Attorneys' Fee Provision: These provisions sound great because they theoretically add to your recovery if you need to evict your tenant. However, they are often not recommended because:

- First, Cal. Civ. Code, § 1717, provides that you cannot impose this obligation on only one party. Even if the lease states that attorneys' fees are only recoverable by the landlord, this will generally allow the tenant to recover fees if they are the prevailing party in a lawsuit, by operation of law.
- Second, the most common controversy with tenants is over recovering possession of the unit. An unlawful detainer judgment comes in two parts: possession and money. Landlords are often satisfied with a judgment for possession. An evicted tenant is likely to have few assets to begin with, and a judgment for possession takes away their known service address. As a practical matter, it is difficult to find an evicted tenant and recover any money damages

(or attorneys' fees) from them. Weighing the additional exposure (of an adverse fee award) against the likelihood of collecting, many landlords delete the fee provision from the lease.

ii. Default Clauses:

1. A standard "default" provision in a lease is not necessary. Any breach of the lease by the tenant will allow the landlord to employ the remedy provided in Cal. Code Civ. Proc., § 1161, which is the statute that defines when a tenant is guilty of "unlawful detainer". Typical default provisions often provide the tenant with additional protection from eviction by requiring the landlord to provide more than the state-law-required three day notice period to cure a breach of the lease. Where such a provision is employed, there is often confusion as to whether the landlord needs to provide the lease-required amount of notice (often seven or ten days) or the state-required minimum notice of three days, or both. It is recommended that the issue be avoided by not including such a provision, and relying instead on the three-day notice period provided in §1161.

iii. Restrictive Clauses

A tenant's obligations - beyond payment of rent and not creating a nuisance - are minimal unless set forth in a written agreement. For example, unless restricted by a lease provision, a tenant has the right to

sublet or assign their tenancy, have pets, use the premises for any lawful purpose, etc.. While some tenant rights - as discussed below - may not be taken away even by a lease provision, others may. For example, prohibitions on pets in the unit are enforceable (subject to service animal exceptions and the case-specific "reasonable accommodation" pets). Therefore, if the owner wishes to have a pet-free building, the owner will be permitted to enforce such restrictions as long as the restriction is in the lease. In non-rent control jurisdictions, in cases of a month-to-month tenancy, such a restriction may be unilaterally imposed by the landlord upon, typically, 30 days notice of change of terms of tenancy. However, in most rent-controlled cities, removing such right from a tenant will generally be considered a "reduction in services" tantamount to a rent increase, meaning the added provision will be unenforceable, or will require a rent reduction to the tenant co compensate for the lost privilege of being able to have a pet.

iv. Material versus trivial breach:

A tenant is guilty of unlawful detainer if she violates a material covenant of the lease and fails to cure it after proper notice to do so. See § 1161(3).

The breached covenant must be express. Trivial breaches will not support a forfeiture, and generally, neither will the violation of implied covenants (e.g., minor changes in use of a leased property from the purpose for

which it was leased, when no purpose is expressly designated in the lease). See, Keating v. Preston (1940) 42 CA2d 110, 118.

Generally recognized material breaches include failure to pay rent, breach of other written material covenants of the rental agreement, unauthorized subleasing or assignment, commission of waste, commission of a nuisance, or the use of the premises for an unlawful purpose. See, §§ 1161(2) – (4).

v. Remedy Clauses:

As with default clauses, remedy clauses are generally not necessary in the lease, as nearly every remedy available to the landlord resulting from the tenant's lease breach is provided by statute. Many of the "remedies" provided in standard leases are not enforceable even when clearly stated. E.g., A provision allowing a landlord to enter the premises in the event of a breach and reclaim possession, would likely not only be found invalid but also probably expose the landlord to liability for an illegal "self-help" remedy.

The standard remedy of the landlord is the statutory procedures set forth in the Cal. Code Civ. Proc., §§1159, et. seq., the "unlawful detainer" statutes, or "eviction laws". These are the provisions that allow a landlord to give a tenant notice that if the lease obligations are not performed within three days of the notice and the tenant remains in possession, the tenant will be "unlawfully detaining" the premises. The statutory remedies include the

right to an expedited procedure for discovery and trial on the issues. But again, it is important not to confuse “rights” with “remedies”.

One “remedy” that is required to be stated in the lease is found Cal. Civ. Code, § 1951.4. This statute essentially provides that a lessor may continue the lease in effect after the tenant's breach and abandonment and recover rent as it comes due only if the lease allows the tenant the right to sublet or assign the lease. If the § 1951.4 provision is included in the lease, the lessor is allowed to seek from the tenant the worth of the entire lease payment amounts extending over the life of the lease, minus any amounts the tenant can show could have been avoided by re-renting the premises (called “mitigation of damages”). Without the § 1951.4 provision inserted in the lease, the lessor is limited to the amount of unpaid rent accruing up until the time of the award, which is the date judgment is entered on the claim. If there is significant time left on a long-term lease beyond the trial date, the lessor will want to have the opportunity to seek to recover that future rent.

vi. Parties to the Lease:

Who Should Sign the Lease: A rental agreement is a type of contract, and Cal. Civ. Code, §1949, et seq. interpreting the nature of a contract, applies. The essential elements of any contract include listing all the parties capable of contracting. See, § 1950(1). Such parties include all natural persons at least 18 years of age

(unless an emancipated minor) and of sound mind. See, § 1556. Finally, each party to the lease must be able to be identified in order to make the contract enforceable. See, § 1558. Basically, a landlord should have any competent adult that will occupy the premises sign the lease.

vii. Security Deposit:

Security deposits protect a landlord against default or other damage caused by the tenant. California law imposes restrictions on the amount of security deposits and the treatment upon termination of the tenancy.

Amount: residential security deposits cannot exceed two times the amount of monthly rent for unfurnished units or three times the amount of rent for furnished units. *See,* Cal. Civ. Code, § 1950.5(c).

Returning Deposit to Tenant: upon notice of termination of the tenancy, the landlord must notify the tenant in writing of their right to a security deposit "walk-through" within two weeks of the termination date, so that the tenant can remediate any identified problems. (§ 1950.5(f)(1).) The landlord must return whatever amount of deposit remains within 21 calendar days of the termination date, along with an itemized statement

of deductions and why those deductions were made. (§ 1950.5(g).)

Interest under SFRO: under the Rent Ordinance, landlords are required to pay interest on all money held for over a year (regardless of what the sum is referred to as). The interest must be paid to the tenant, every year, on the "annual due date" (which is the date the landlord received the sum). Unlike the principal of the security deposit, the interest must be paid within *two* weeks, however, the landlord may retain more if deductions exceed the security deposit. Landlords must compute simple interest (annual rates are available at the Rent Board), and they should retain the money in a segregated account.

viii. Late Charges:

- Landlords use late charges to offset the additional cost and hassle of receiving rent after its due date or any "grace period" under the lease. There is no statutory right to late fees, so if the landlord is entitled to them, at all, they must be stated in the lease.

- Liquidated Damages: However, excessive late fees are considered "liquidated damages", within the meaning of Civil Code §1671, to the extent require a good-faith estimate of the actual damages resulting from a late payment, and the actual damages are "impracticable or extremely difficult to fix". The losses caused by late payment of residential rent are limited to interest and administrative costs of collecting and accounting for the late rent. The leading case is *Orozco v. Casimiro* (2004) 121 Cal.App.4th Supp. 7, 11, 17 Cal.Rptr.3d 175. In that case the court ruled against the landlord because the landlord failed to prove that "the actual losses caused by late payment of rent were extremely difficult or impracticable to determine."
- Note: the takeaway here is that, if a tenant fails to pay rent (or "habitually pays rent late"), and you seek to evict the tenant, it is probably a good idea to give up the late fees in stating the amount due under the notice. As explained in the section "Residential Evictions", any overstatement in the

amount of rent due in a notice underlying a residential eviction could be fatal to the action.

ix. Renewals:

- Automatic Renewal of Lease if Tenant Remains in Possession and Landlord Accepts Rent: Pursuant to Cal. Civ. Code, § 1945, "If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year." In rent controlled jurisdictions, landlords are required to accept the tenant's rent if offered at the expiration of the lease, so tenants have, in effect, an endless option to renew the lease on the same terms every month. (You could think of this as a potential, qualified life estate.)

x. Tenant Improvements:

- Generally: Don't allow it. Allowing a tenant to make improvements is more trouble than it's worth. Aside from the concept that one person's

"improvement" may be another person's "waste", a common complication involves a dispute over the value of authorized improvements (e.g., where the tenant does construction work in lieu of rent), the tenant withholding rent, and the landlord having to litigate factual issues in what would otherwise be circumvented in a simple non-payment of rent eviction.

- Note: As stated above, a waiver of the right to habitable premises is unenforceable, except subject to language in § 1942.1, providing "the lessor and the lessee may agree that the lessee shall undertake to improve, repair or maintain all or stipulated portions of the dwelling as part of the consideration for rental". But, again, this will not generally be worth the added complication.

xi. Assignment and Subletting:

- Assignment versus Subletting: "The difference between an assignment and a sublease is that an assignment transfers the lessee's entire interest in the property whereas a sublease transfers only a portion of that interest, with the original lessee

retaining a right of reentry at some point during the unexpired term of the lease." Kendall v. Ernest Pestana, Inc. (1985) 40 Cal.3d 488, 709 P.2d 837. In most other respects however, there is no difference. For example, unless the master tenant or assigning tenant is expressly released from the lease obligations, he or she remains liable for the subtenant or assignee's obligations under the master lease, in effect becoming a "surety" of the subtenant.

- Generally: Check the lease to see if either is allowed. A leasehold is a right, and "[u]nless a lease includes a restriction on transfer, a tenant's rights under the lease include unrestricted transfer of the tenant's interest in the lease". See, Cal. Civ. Code, § 1995.210(b). An ambiguous provision in a lease purporting to limit subletting or assigning is strictly construed in favor of alienability (i.e., "subletting"). See, Kendall v. Ernest Pestana, Inc. (1985) 40 C3d 488, 494.
- Landlord's Prior Written Approval: These lease covenants are allowed but are generally not

enforceable if consent is unreasonably withheld. See, Carmi Developers (Cal.), Inc. v. Marathon Dev. Cal., Inc. (1992) 2 C4th 342. Whether the landlord unreasonably withheld consent is a question of fact. See, Reuling v. Sergeant (1949) 98 CA3d 73.

1. Reasonable conditions include that the proposed new tenant or subtenant meets the regular reasonable applications standards of the landlord, that he or she agrees to sign and be bound by the current rental agreement between landlord and the present tenant, that the new tenant or subtenant, if requested by the landlord, completes the landlord's standard form application.

- Subletting in Rent-Controlled Jurisdictions:

1. A major aggravation for landlords in rent controlled cities is the problem of the “revolving door tenancy”, which is where an “original occupant” takes possession and enjoys the benefit of rent control for

several years, then vacates but leaves a subtenant or assignee in possession. Landlords may wish to prohibit assignment and subletting in rent controlled jurisdictions to avoid the "revolving roommate" situation, whereby the apartment is never vacant, and the landlord is prohibited from raising the rent to market rate. However, many rent ordinances require that a landlord allow the tenant to assign or sublet in certain circumstances, so long as the assignment or subletting is not of the entire lease term or for the entire unit.

2. San Francisco Rules and Regulations 6.14 and 6.15 govern subletting and assignment. Generally speaking, if your lease prohibits subletting and assignment, it must so state in **bold** and separately initialed by the tenant. And, even if it is prohibited, if the lease is for more than one person or the "open and established

behavior of the landlord and tenants" has allowed for more than one person, a one-to-one replacement is allowed if the landlord approves a request or such approval is "unreasonably withheld" by the landlord. However, it tends to be a better idea in rent controlled jurisdictions to simply ignore the request and allow the one-to-one replacement to avoid the following problem:

3. Avoiding the "Revolving Door" Roommate and Eternal Rent Control:
    a. Unless the landlord is careful, the new tenant/subtenant can become an "original occupant" and assume the prior tenant's controlled rent, piggybacking on the long-term tenancy's below-market rent. This issue has been addressed both by provisions in the local ordinances and at the state level by the Costa-Hawkins Rental Housing

Act (Cal. Civ. Code, §§ 1954.50, et seq. ("Costa Hawkins"). Costa Hawkins allows a landlord to raise the rent to market rate once "the original occupant or occupants who took possession of the dwelling . . . no longer permanently reside there" even when their subtenants or assignees are still there. See, § 1954.53(d).

b. However, even under Costa Hawkins, the landlord can lose his or her right to establish the new rent to the succeeding tenant by waiver. The issues were discussed in the case Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd. (2002) 98 Cal.App.4th 345, 119 and that case should be reviewed by every landlord as the "how not to" guide

for waiving rights under Costa Hawkins.

c. General Tips: Make sure you know who your original occupants are under the lease. (In the section on "Parties to the Contract" above, these should be the people who originally signed it an all moved in at the same time, at the start of the lease.) Only accept rent from one of these lessee's. Let them move in subtenants on their own; do not form a lease agreement with these subtenants. The moment you have good reason to believe that the last original occupant has moved out, ask a lawyer about serving a notice to increase rent to the fair market rate, and do not accept payments of the base rent from the other occupants until the notice expires.

xii. Use Restrictions:

- Generally: If property is rented for a particular purpose, the tenant must use it for this purpose and not for any other purpose. (Unauthorized use will constitute breach and form the basis for an eviction.) See, Hignell v. Gebala (1949) 90 CA2d 61, 65. Even if the lease does not specify a purpose, the property will be deemed to be authorized only for purposes not materially different than for how it is ordinarily used. See, Davidson v. Goldstein (1943) 58 CA2d Supp. 909, 910.
- Residential Use Clauses: These are allowed and a landlord may want to incorporate such a provision for the lease of residential property to ensure that the tenant does not use it to run a business.
- CC&Rs: For common interest developments ("condo complexes"), the governing documents may impose additional restrictions that the landlord will want to incorporate into their rental agreement.

xiii. Arbitration Clauses:

- Generally: An arbitration clause is a term in a contract that requires the parties to use a non-judicial, neutral third-party to settle disputes. While a lot could be said on this subject, for our purposes it is fairly simple: binding, mandatory arbitration provisions are not valid in residential lease agreements.
- Invalidity of Arbitration Clauses: Cal. Civ. Code, §§ 1953(a)(2) – (4) provides that an agreement that the tenant waive his right to assert a cause of action against the lessor in the future, his right to notice of a hearing or his procedural rights in litigation are void as a matter of public policy. Lessors cannot contract for their tenants to waive their right to a jury trial in favor of binding arbitration. Jaramillo v. JH Real Estate Partners, Inc. (2003) 111 CA4th 394, 403.
- Allowed in Separate Agreements and for Habitability Disputes: §1953 only applies to lease agreements. As long as the contract containing the clause is something other than the lease itself, arbitration clauses are allowed. Further, Cal. Civ.

Code, § 1942.1, expressly provides that arbitration agreements are allowed to resolve only disputes related to "tenantability" (i.e., habitability), so an arbitration clause would be allowed to resolve such disputes.

III. Using an Agent

1) Agents of a Party: Generally, a contract can be signed by one person acting on behalf of another party, called the agent and the principal, respectively. In practice, this is more common in commercial lease situations, but occurs in residential leases as well, particularly where the landlord/owner is represented by a leasing of management company. The two primary issues in such circumstances are whether the agent's authority needs to be in writing and whether the agent is authorized to act for the principal.

2) Authority in Writing: if the document (the lease, in this case) is required to be written, then the agent's authority must also be written. (For example, leases for over one year are required to be in writing, so an agent would need to have a written agreement with the landlord/owner to execute such an agreement.)

3) Authority To Contract: to insure the agent has authority, the other party to the contract will need evidence that the principal has authorized the agent to enter into the type of agreement being offered. This can be provided by various methods, including written or verbal confirmation from the known principal. In practice, however, things are generally handled more informally, and the other party to the contract often takes its chances by assuming the agent has the proper authority. However, because misunderstandings and outright frauds do

exist, it is recommended that the non-agent party to the contract contact the principal to confirm the agent's authority.

IV. Avoiding Landlord-Tenant Problems

The easiest way to do this is to pay attention to the points raised above.

- Use a lease that contemplates the most common areas of dispute that was written to comply with your local rent ordinance (if any).
- Be aware of your rights and obligations under California and local law.
- Do not engage in "self-help" evictions! (This is discussed below in "Residential Evictions")
- Perhaps as important as any other of the trouble avoidance tips, treat your tenants with respect, as you hope they will treat you, respond timely to complaints about the premises, and try to avoid 'nickel and diming' the tenants when small issues arise.
- Finally, it is generally a good idea to hire a lawyer to assist you with drafting and serving notices and complaints for unlawful detainer. There are a lot of simple mistakes that can set you back months.

4)

PART 2 (8:55 am -10:10)

Residential Evictions

- Grounds
- Mandatory Notice Requirements
- Eviction Procedure and Pleadings
- Post Foreclosure Evictions
- Strategies
- Defenses
- Discovery
- Warranty of Habitability
- Unlawful Lockouts
- Appeals

I. Grounds for Eviction

A. Without Cause: In general, a landlord does not require "cause" to evict a tenant under California law. Residential leases can be terminated by thirty days' notice (for tenancies of less than one year) or sixty days' notice (for tenancies of more than one year). See, Cal Civ. Code, § 1946.1.

1. No Retaliation: This does not mean that California imposes no limits on evictions. Section 1942.5 prohibits "retaliatory evictions". Subdivision (c) provides, "It is unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of those acts, for the purpose of retaliating against the lessee because he or she . . . has lawfully and peaceably exercised any rights under the law". This does not prevent a lessor (in a non-rent-controlled jurisdiction) from exercising his rights to terminate a lease. However, it is crucial that a landlord's motive for terminating a tenancy is not based on retaliation, e.g., for a tenant's complaint to a city agency as to habitability issues in the dwelling unit. See, § 1942.5(a).

2. No Discrimination: Similarly, a lessor may not terminate a tenancy based on discriminatory intent. Unlawful housing discrimination on the basis of race, color, religion, national origin, ancestry, sex, sexual orientation, age, family status, marital status, economic class, disability or other protected group status under the Unruh Act (Cal. Civ. Code §§ 51, 52), the California Fair Employment and Housing Act (Cal. Govt. Code, §§ 12900 - 12996) or the

federal Fair Housing Act (42 U.S.C. § 3601 – 3631) is illegal and, if successfully proven, is a defense to an unlawful detainer.

B. "Just Cause" Evictions: Rent controlled jurisdictions deviate from the general California state law on termination of tenancies. The reason for this is that rent-controlled units tend to continue at sub-market rental rates over time (which provides stability for tenants in volatile rental housing markets), and this creates an incentive for landlords to be able to retake possession of rental units so that they can re-let them at the (higher) fair market value. Without eviction controls, rent ordinances could be circumvented on sixty days' notice of termination of tenancy, without cause. Instead, rent ordinances, like the San Francisco Rent Ordinance, generally allow termination of tenancies only for one of an enumerated set of "just causes". These causes are found in section 37.9, and they allow a landlord to terminate a tenancy in the following situations:

1. The Tenant hasn't paid rent, or the tenant habitually pays rent late or bounces checks
2. The Tenant has breached a lease covenant (other than paying rent)
3. The Tenant has committed a nuisance
4. The Tenant is using the rental unit for an illegal purpose
5. The Tenant refuses to execute a written lease under the same material terms as a previous agreement
6. The Tenant has refused the landlord access to the unit as provided by law

7. The Tenant holding at the end of the term is a subtenant, not approved by the landlord
8. The Landlord seeks to recover the unit to live their or for a close family member to live there
9. The Landlord seeks to recover the unit to convert it to a condominium
10. The Landlord seeks to recover the unit to demolish it or otherwise remove it from housing use
11. The landlord seeks to temporarily remove the unit from the rental market to make capital improvements
12. The landlord seeks to make substantial rehabilitations
13. The Landlord seeks to recover the unit to withdraw it from the rental market (see, Ellis Act).
14. The Landlord seeks to recover possession to do lead abatement work
15. The Landlord seeks to demolish the property under a development agreement with the city
16. The Tenant's "Good Samaritan Status" has expired (this status relates to temporary housing following an emergency, like an earthquake or fire).

II. Mandatory Notice Requirements:

A. This is the crucial first step to any eviction action, and it is essential that a landlord follows the statutes governing the content and service of notices, because strict compliance is a prerequisite to bringing an unlawful detainer action. (Parsons v. Superior Court (2007) 149 Cal. App. 4th Supp. 1.)

B. The Unlawful Detainer Statutes: First, for a landlord to avail herself of the unlawful detainer statutes, she must plead facts that fall within them. California Code of Civil Procedure, section 1161 provides for four different factual circumstances justifying the summary unlawful detainer procedure:

1. § 1161(1): end of fixed term lease or lawful termination of tenancy
2. § 1161(2): non-payment of rent
3. § 1161(3): breach of lease covenant (other than payment of rent)
4. § 1161(4): commission of "waste" or "nuisance".
5. Note: § 1161a provides a basis for eviction after the foreclosure of property, and is discussed below.

C. Three-Day Notice: A three day notice can be used to terminate a tenancy under §§1161(2), (3), (4) and 1161a. In the case of a three-day notice for non-payment of rent, the notice must state the exact amount of rent due and how it can be tendered to cure the notice. Three day notices to (cure or) quit for breached covenant, waste or nuisance must be filed with the Rent Board. All notices served on tenants of residential property in San Francisco should advise that advice is available at the Rent Board.

1. Note: An 1161(1) eviction will either proceed on a § 1946.1 notice (below) or even no notice at all (assuming the expiration of a fixed-term lease, the non-renewal of that lease, and a non-eviction-controlled unit.)

D. Thirty/Sixty-Day Notices: California Civil Code, section 1946.1, authorizes the termination of residential tenancies by a landlord on 60 days' notice. (A tenant

can terminate the same by providing notice equal to one term, e.g., "a month"; a landlord may also terminate on 30 days' notice for tenancies shorter than one year.)

1. As several of the "just causes" under the San Francisco Rent Ordinance are "non-fault" evictions, they will proceed under this kind of notice.
2. Note: New language is required to be included in a §1946/1946.1 notice relating to personal property left at the unit, following tenant vacancy. This language should be in any 30/60 day notice you serve under this section: "State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out."

E. Longer Noticing Requirements: Certain evictions require notices longer than the 60 days under, including post-foreclosure evictions (90 days' notice), "Ellis Evictions" (evictions under the Ellis Act, intended to take a property off of the residential rental market, minimum 120 days' notice), and termination of "Section 8" tenancies (90 days' notice). Post-foreclosure evictions are discussed below. Ellis Evictions tend to be outside the scope of a landlord seminar, as the owner ceases to be a "landlord". Section 8 tenancies can only be terminated for good

cause (in which case, the three day notice will suffice) or by a landlord's non-renewal of the contract with the government agency, although the nuances of these procedures are also outside the scope of this lecture.

III. Eviction Procedure and Pleadings

A. Summons and Complaint:

1. Once a tenancy is properly terminated (with just cause as required) – and the notice that forms the basis of the termination has expired, a landlord may file an unlawful detainer complaint.

2. Jurisdiction: An unlawful case is a civil action, and a complaint for unlawful detainer can be filed in limited (under $25,000.00) or unlimited (over $25,000.00) superior court, depending on the amount in controversy. (However, they cannot be filed in small claims court.) The dollar amount generally relates to the past-due rent damages. As a practical matter in non-payment of rent cases, you may want to elect the lowest dollar amount (limited jurisdiction, up to $10,000.00) simply to save on filing fees, as a landlord rarely recovers money damages from a tenant.

3. Venue: The proper venue for an unlawful detainer case is the county in which the piece of real property exists. See, Cal. Code Civ. Proc., § 392(a)(1), (b).

4. Summons: Unlawful detainer cases are summary proceedings (because the issues are simple, and the landlord is in a hurry to regain possession of a property that has ongoing costs associated with it). Accordingly, in contrast

to the thirty-day summons used for regular civil actions, an unlawful detainer defendant is required to respond to the summons within five days. See, Cal. Code Civ. Proc., § 1167. Also, unlike a regular summons, an unlawful detainer summons can be served by "post and mail", upon court order, if service by other means cannot by reasonable diligence be effectuated. See, Leland Stanford Junior University v. Ham, supra; Cal. Code Civ. Proc., § 415.45.

5. Complaint: A complaint for unlawful detainer treat limited issues: "Unlawful detainer actions are . . . of limited scope, generally dealing only with the issue of right to possession and not other claims between the parties, even if related to the property. Larson v. City and County of San Francisco (2011) 192 Cal. App. 4th 1263, 1297. Generally speaking, other causes of action that may exist between the landlord and unlawful detainer defendant may not be litigated in an unlawful detainer action, unless they directly relate to the right of possession. Additionally, an unlawful detainer complaint has the following requirements, listed in Cal. Code Civ. Proc., § 1166:

   a) The complaint must be verified;

   b) It must allege facts forming the basis of the plaintiff's claim to right of possession;

   c) It must describe the premises with reasonable particularity;

d) (For non-payment of rent cases, it must state the amount in default);

e) It must allege the method used to serve the notice that forms the basis of the complaint; and

f) For residential property, the notice must be attached, and the lease must be attached unless it is oral, the plaintiff alleges that it is not in his possession, or the complaint is based solely on non-payment of rent.

g) Note: Because these allegations are specific to unlawful detainers, it is recommended that you use the Judicial Council Form Complaint for Unlawful Detainers. (Form UD-100).

B. The Eviction Case Process:

1. Trial Setting: Unlawful detainer cases are exempt from regular case management/ trial setting procedures. Instead, unlawful detainers are given preference over other civil actions. See, § 1179a. Once the defendant has answered the complaint, a party may submit a Request To Set Case for Trial (Judicial Council Form UD-150). The trial date must be set within twenty days of the request. See, § 1170.5(a).

2. Discovery: Because of the trial setting preference, pretrial discovery and other motions happen fast. Be sure to have your discovery and law and motion strategy figured out before you set the case for trial.

3. The Trial: Unlawful detainer trials are similar to other civil trials. Again, the trial is generally only to determine the limited issue of the right to possession, so this is what the plaintiff's case should focus on.

4. Judgment: An unlawful detainer judgment is "bifurcated" in that a prevailing plaintiff may be awarded possession immediately, so that he may obtain the writ of possession, but the judgment can be amended afterward for unlawful detainer damages, per diem damages, court costs and attorneys' fees, if allowed by the lease. See, § 1169.

5. Writ of Possession: Once a plaintiff obtains an unlawful detainer judgment, the clerk must issue a writ of possession upon the judgment, so the landlord may regain possession of the premises. (See, § 1170.5(a); Judicial Council Form EJ-130.) The plaintiff can bring the writ of possession, along with county-specific "sheriff's instructions" to the County Sheriff, who will set an eviction date to remove the occupants from the property, so the owner may retake possession. It is a good idea to have a locksmith available to change the locks on the eviction date.

6. Evicting the Tenant: Once the sheriff's have set a lock out date, the tenants and other occupants will be dispossessed, losing their right to return to the property, and any subsequent entry will actually be misdemeanor trespassing. (See, Cal. Pen. Code, § 419.) Prior to the lock-out, the defendant may be able to obtain a stay, which would delay the eviction date:

a) Request for Stay: A defendant may make a request for a stay of enforcement of the writ, on a noticed motion, during the time that an appeal could be noticed (Cal. Code Civ. Proc., § 918) or by application, after an appeal is already filed, upon a showing of "extreme hardship" and the payment to the court of rent during the stay (Cal. Code Civ. Proc., § 1176).

b) Bankruptcy: While the filing of a bankruptcy petition will prevent a landlord from filing an action for unlawful detainer (11 U.S.C. § 362(a)), bankruptcy does not automatically stay the enforcement of a judgment for possession (subject to certain exceptions under § 362(l)).

7. Property Left at the Premises: If the tenant abandons property at the premises, the landlord is required to follow certain procedures to either ensure its return or dispose of it. Civil Code, section 1983, requires that the landlord give notice to the tenant or anyone else assumed to be the owner of the personal property, along with a description of the personal property left behind. The landlord must take reasonable care to preserve the property until the time for its owners to recover it has passed (*see,* §§1984, 1985). If it is not reclaimed by that time, the landlord must either auction it to the public by competitive bidding or, if it is reasonably believed to be worth less than $700.00, the landlord may dispose of it.

IV. Post-Foreclosure Evictions

A. Generally: A successor to property that has been sold under several circumstances may evict the occupants in possession of that property on three days' notice, pursuant to California Code of Civil Procedure, section 1161a(b). (Of the five kinds of sales illustrated in that section, the most likely circumstance for a foreclosure eviction in California is 1161(b)(3), where a promissory note was secured by a deed of trust, the owner defaulted, and the trustee sold the property under a power of sale in the deed of trust, under California Civil Code, section 2924.)

B. These actions proceed similarly to other evictions based on a three day notice (subject to the exception below), except that unlawful detainer complaints must specifically allege a cause of action under this section: "In an action regarding residential real property based on Section 1161a, the plaintiff shall state in the caption of the complaint 'Action based on Code of Civil Procedure Section 1161a'".

C. Exception for Tenants: Where the occupants in possession of the foreclosed property are tenants, rather than the former owners, they are entitled to additional safeguards under California Code of Civil Procedure, section 1161b.

1. Purpose: The California State Legislature enacted section 1161b, based on "an unprecedented threat to its state economy and local economies because of skyrocketing residential property foreclosure rates in California" . . . after "Residential property foreclosures increased sevenfold from 2006 to 2007." (*See,* legislative history of §1161b).

2. Tenants under periodic leases: tenants without a fixed-term lease are entitled to 90 days' notice before an eviction may commence.

3. Tenants under fixed-term leases: If a tenant in a foreclosed property has a fixed-term lease, they are actually entitled to remain in the property, under the terms of that lease, until its expiration. This additional protection was open to exploitation (e.g., where former owners (or simply squatters) fabricated long-term leases for sub-market rent, holding them out as genuine, and expecting them to survive a foreclosure), so this may often become a factual dispute in court. Nonetheless, there are several situations contemplated in §1161b that disqualify tenants from this *extra* protection, beyond the standard 90 days' notice:

   a) The purchaser will occupy the premises;

   b) The lessee is the mortgagor or the child, spouse, or parent of the mortgagor;

   c) The lease was not negotiated at "arms' length"; or

   d) The lease is for substantially below-market rent.

V. Strategies

A. There is primarily one issue in an unlawful detainer case – possession of the premises - so the best strategy is to keep it simple. As explained above, in unlawful detainers, a party must request a trial date. If you think you will have a complicated discovery plan, you should wait to serve your discovery on the tenant

before you request a trial date, which must be set twenty days from the request, by statute.

B. Also, keep in mind that most unlawful detainer cases settle. Even for non-payment of rent cases, with clear liability, it is common for landlords and tenants to enter stipulated agreements that provide for favorable terms for the tenant (which might include, for example, a waiver of past-due rent, the return of a security deposit, and/or the dismissal of the case during the "masking period" (see, §1161.2(a)(5)) so that the eviction is not public record and the tenant can find another residence). These agreements are often favorable to the landlord as well, who can condition them upon a definitive move-out date (versus a sheriff's eviction date, which might be delayed for any number of reasons) and the return of cleaned, undamaged premises.

VI. Defenses and Challenges to the Complaint

A. Motion To Quash: As stated above, a landlord must strictly comply with the notice procedures to come within the summary unlawful detainer procedure. Generally, a defendant files a motion to quash to challenge the service of a "summons" (which is the tool used to obtain jurisdiction over the defendant) on the basis of improper service. In the peculiar world of unlawful detainers, they are also used to challenge the basis for bringing the unlawful detainer action in the first place.

1. Rationale: because unlawful detainers is the *only* civil action that justify the use of a five-day summons, if a defendant can show that the plaintiff has no

cause of action for unlawful detainer, the summons is defunct as to any *other* cause of action.

2. Application: Defendants can file a motion to quash alleging defective service of the underlying notice, a rescinding of the notice (e.g., by service of another notice or, in the case of non-payment cases, the acceptance of rent after the expiration of the notice), filing of the unlawful detainer complaint before the expiration of the notice. In rent controlled jurisdictions like San Francisco, a motion to quash may also lie for failure to file certain notices with the Rent Board or failure to pay required relocation assistance money along with service of the notice. Therefore, it is important to comply, not only with California state law, but also with local rent ordinances in bringing an unlawful detainer action.

B. Demurrer: Demurrers test the legal sufficiency of a complaint and raises only issues of law. If a complaint is, for example, vague as to alleging a cause of action for unlawful detainer (e.g., by not alleging the requisite number of days has expired or that the notice was properly served) a defendant may demurrer. For this reason, it is a good idea to use the **Judicial Council form Complaint (Form UD-100)** and to make sure you understand each allegation and that you are in compliance with it.

1. Application: Unlike motions to quash (filed three to seven days before hearing), demurrers must be filed and served sixteen court days before hearing. As a result, a defendant can really slow down a case by filing a

demurrer. It is often a good idea to ask the court to shorten time for hearing or (if you suspect the defendant's grounds for demurrer have merit) simply to file an amended answer and reserve it.

C. Answer and Substantive Defenses:

1. The choice of substantive defenses depends on the basis for the eviction. The most common ones are listed in the **Judicial Council Form Answer (Form UD-105**) ¶3. These include allegations that the landlord is retaliating or discriminating against the tenant or that the landlord has breached the warranty of habitability or failed to make repairs. The warranty of habitability is explained below. As for making repairs, if there are defective conditions at the premises, and the tenant has provided notice to the landlord, this can serve as a defense to an eviction for non-payment of rent, on the basis that the tenant has a right to "repair and deduct" to remediate the conditions.

VII. Discovery:

A. All the same discovery that is available in a general civil action is available in an unlawful detainer. The Judicial Council has also provided a specific form interrogatory (Form UD-106) for unlawful detainers, which will allow you to obtain answers to objection-proof questions designed specifically for this factual circumstance.

B. If you believe that the condition of the property is going to be relevant to the case (e.g., if the tenant raises a habitability defense), you may want to conduct a land inspection as part of your discovery plan.

C. As explained above, make sure to track your discovery plan so that all discovery, including discovery motions, is completed by five days before the trial date.

VIII. Warranty of Habitability:

A. The landlord has a duty to provide habitable premises. (*See,* Cal. Civ. Code, §§ 1941, 1941.1.) This duty is most likely triggered by notice (i.e., the landlord isn't presumed to have perfect knowledge of all defective conditions at the premises at all times). However, upon notice, the landlord's duty to provide habitable premises is a mutually dependent covenant with the tenant's obligation to pay rent, so this may serve as a defense to an action for non-payment of rent.

B. As explained above, where this defense is raised (and you suspect it may have some merit), you may want to include a land inspection as a part of your discovery plan.

IX. Unlawful Lockouts:

A. Forcible Entry (Cal. Code Civ. Proc., §1159) includes violently breaking into property, expelling a renter through violence or threats, even though entry may have been peaceful

B. Forcible Detainer (Cal. Code Civ. Proc., §1160) is the holding of possession of property by violence or threats or the unlawful entry of property and the refusal to surrender for a period of five days after a demand to leave. While this probably

sounds more like the domain of local police, the reason these sections are in the same chapter as the Unlawful Detainer Statutes (Cal. Code Civ. Proc., §§ 1159 – 1179a) and the reason they are included in this discussion is because they protect anyone with a right to possession (including a renter) against others, even those with legal title (like a landlord/owner). In other words, self-help evictions are prohibited by law.

C. Self-Help Evictions Prohibited: It is patently illegal for a landlord to deny access to the unit to the tenant. As clearly set forth in Cal. Civ. Code, § 789.3, "a landlord shall not, with intent to terminate the occupancy of property used by a tenant as his or her residence, willfully: (1) Prevent the tenant from gaining reasonable access to the property by changing the locks or using a bootlock or by any other similar method or device; (2) Remove outside doors or windows; or (3) Remove from the premises the tenant's personal property, the furnishings, or any other items without the prior written consent of the tenant, except when done pursuant to the procedure set forth in Chapter 5 (commencing with Section 1980) of Title 5 of Part 4 of Division 3" While it is often tempting to take such measures, due to the tenant's breach of the lease or other activity, possession may only be recovered by the landlord under four scenarios: voluntary surrender by the tenant, abandonment by the tenant, police enforcement of the 'lodger law,' or court order:

1. Surrender: The tenant may voluntarily vacate the premises, usually on notice to the landlord, allowing the landlord to retake possession.

2. Notice of Belief of Abandonment: Cal. Civ. Code, §1951.3, provides a statutory procedure which may be employed by the landlord in cases where tenant is at least 14 days behind in rent and the landlord "reasonably" believes the tenant has vacated the property. If the tenant fails to give the lessor written notice, prior to the date of termination specified in the lessor's notice (in form provided by statute), stating that he does not intend to abandon the real property, the lease will be considered forfeit and the landlord may retake possession. The primary issue in such cases is the landlord's reasonable belief that the tenant has actually abandoned the premises. This belief is often based on a visual inspection of the premises (to attempt to determine if the tenant's possessions remain) or statements that indicate the tenant has left for good. This procedure should not be used lightly, as it will result in liability to the landlord if the tenant has not actually permanently moved and if the landlord's belief turns out to have been unreasonable.

3. Police enforcement of the 'Lodger Law'

In the very limited case where an owner of a home rents no more than one room to a tenant who shares the home with the owner, the owner may request police assistance to remove the tenant from the home once a proper notice of termination of tenancy has been served and expired. The applicable code sections - Civ.Code §1946.5 and Penal Code §602.3 – allow the police to remove the lodger without court proceedings once the requisite facts are

established. While patrol officers have shown reluctance to enforce these provisions, having been trained to defer on such disputes as 'civil matters,' an explanatory letter to the precinct captain has resulted in the subsequent enforcement of the statutes by previously reluctant officers.

4. Court Order: An order issued by the appropriate court to confirm that the owner is legally entitled to recover possession, usually issued after the landlord successfully prosecutes an unlawful detainer case against the tenant.

X. Appeals:

A. Judgments from unlawful detainer actions may be appealed. However, like bankruptcy petitions, the filing of an appeal will not automatically stay the enforcement of the unlawful detainer judgment (subject to the procedure described above under Cal. Code Civ. Proc., § 1176). Because of this – and the fact that defendants will generally be removed from the premises before an appeal is heard anyway - unlawful detainer judgments are rarely appealed.

B. Unlawful detainer cases are usually filed in limited civil court, so they are appealed to the appellate division of the superior court (as opposed to the court of appeals). As such, the California Rules of Court governing "appellate rules" (Title Eight) are more relaxed for filing briefs and motions in the appellate division.

C. Notice of Entry of Judgment: The time to appeal expires 30/60 days (limited v. unlimited cases, respectively) after either the clerk or the prevailing party serves the losing party with a notice of entry of judgment (or, if none is served, 90 days

after entry of judgment). So, it is a good idea to serve these as soon as possible, to bring finality to the case.