

THE STATE BAR OF CALIFORNIA

WHAT  
SHOULD I  
KNOW  
BEFORE I  
RENT?

GET THE  
LEGAL  
FACTS  
OF LIFE

# What should I know before I rent?

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## 1 *Are all rental agreements alike?*

No. There are several kinds of rental agreements, including a *lease* for a specific time period or renting “month-to-month.”

A *lease* is for a definite period of time—generally one year. Unless you break the terms of the lease, the owner of your apartment or house (your landlord) cannot change the agreement or raise your rent—unless the lease says otherwise. The owner also cannot ask you to move until the lease period is up.

A month-to-month rental agreement is not for a set period of time. It continues until you decide to move or the owner asks you to leave. If you pay your rent monthly, you must give the owner 30 days written notice that you are moving. An owner who wants to raise your rent must inform you in writing 30 days ahead of time if the increase is 10 percent or less, and 60 days ahead of time if the increase is more than 10 percent. An owner who wants you to move must give you a written 30-day notice if you have lived in the rental property for one year or less. If you have lived in the rental property for more than a year, you must receive a 60-day written notice to vacate. (However, you and the owner may agree in writing to a shorter notice.) Or, if you live in subsidized or rent-controlled property, you may be entitled to a different notice.

If you break the rules (by not paying the rent, for example, or by using the apartment for illegal purposes or creating a nuisance), the owner can give you a 3-day notice to pay your rent or move out, to stop your illegal behavior or move out, or to simply move out.

**Note:** In 2009, federal legislation established stronger protections for those who live in rental properties that are foreclosed. At a minimum, the new owner (usually a bank) must now give tenants 90 days’ notice to move after the foreclosure sale. If the renter has a long-term lease or is a Section 8 tenant, he or she would have the right to remain in the home until the end of the lease—unless the new owner plans to move into the home. In such a case, the tenant would be entitled to a 90 days’ notice to move out.

## 2 *Must rental agreements be in writing?*

No. Leases and month-to-month agreements may be oral or written. However, a lease for more than one year generally must be in writing to be binding.

**Oral agreement.** With an oral agreement, nothing is written down. You and the owner talk things over and come to an understanding. Some people like oral agreements because they have fewer rules. However, since you and the owner might remember the agreement differently in several months, it is generally better to put the agreement in writing. In addition, it may be difficult to prove what your agreement is if it is oral.

**Written agreement.** If you have a written agreement, read it carefully and make sure that you understand it. Sometimes a month-to-month agreement or lease mentions additional *Rules and Regulations*. Do not sign the agreement until you read the extra rules. Also, make sure that any blank spaces in the agreement are filled in or crossed out before you sign it. Ask for a copy that has both your signature and your landlord's signature on it.

When you rent an apartment or house, ask for the name, address and phone number of the owner or the owner's agent. You should have this information in case of an emergency, such as a broken water pipe or lost keys. You also should know where to reach the owner if you have a complaint.

In California, the law says that the names and addresses of the owner and manager must be on the rental agreement if the building has three or more apartments. This information can also be posted in the building in two places where tenants are likely to see it. If the owner's address is not listed, talk to your building manager. The manager must fill in for the owner.

## 3 *Can I change a written agreement?*

You can make changes before you sign, as long as the owner agrees. Just cross out whatever the two of you agree to take out. Write in any additions. For instance, your agreement may say that your rent is due on the 10th of each month. If you want

to pay it on the first of the month, you could ask the owner to make that change or cross it out. Both of you must initial all changes.

If the agreement states that everything in the apartment is in good repair, and you have not had a chance to inspect, write *Subject to Inspection* next to that paragraph.

Some written agreements include rules that cannot be enforced. Many rental agreements are printed forms available at stationery stores. These forms are often out-of-date because the law has changed. You will not be bound by any illegal or outdated rules in the agreement you sign. For example, your agreement may say that the owner is not responsible if you get hurt because the building is not kept in good repair. Such a statement, however, may not be legally valid. Or the agreement might say that you cannot make repairs and deduct the cost from your rent. But sometimes you can.

#### **4** *Do I owe any money besides the rent?*

You might. The owner has the right to ask for some fees and deposits. And you have the right to a receipt or written agreement that explains the charges and how you can get a refund later.

Although the law considers all deposits to be *security deposits*, here are some of the payments that the owner might ask you to make:

- **Last month's rent in advance.** The owner can ask you to pay the last month's rent before you move in. Then, if you give proper notice before moving out, you will not have to pay rent that last month.

- **Security deposit.** This deposit can be used for such things as replacing a broken window or other damage caused while you were a tenant. But if you did not cause any damage, the security deposit should be given back to you.

- **Cleaning fee or deposit.** Some owners want a cleaning deposit or fee. Your lease may say that such a fee is not refundable. That, however, is illegal. Whether it is called a fee or a deposit, you usually can get the money back if you keep the place clean.

- **Credit check fee.** Many landlords will pass the cost of doing a credit check to you.

When either you or the landlord give notice that you will be moving out, you can ask that the landlord inspect the property *before* you move so you can fix any problems and get your security deposit back. This does not apply if you get a 3-day notice for non-payment of rent or breach of the lease.

The owner must return your security deposit no later than three weeks after you move, or tell you in writing why you will not get it back. He or she must also account for how your money was spent. An owner who needs to use part of the money for cleaning or repairs must return the balance to you.

But what if the owner does not notify you? Or what if you believe the owner is not entitled to keep the money? You can sue in small claims court. If you win the case, you could get part or all of your deposits back. To find out more about the small claims court, order a complimentary copy of the State Bar pamphlet *How Do I Use the Small Claims Court?* (For information on ordering this pamphlet and other consumer pamphlets, see page 13.)

California law puts a limit on the total amount of deposits that can be required. The total cannot exceed the cost of two months rent for an unfurnished apartment or three months rent for a furnished place.

Also, keep in mind that you are not covered by the owner's insurance policies. If you want insurance protection against fire and theft, you can purchase renter's insurance.

**Note:** It is better to pay with a money order or check. If you mail your rent to the landlord, send it by certified mail with a proof of mailing. Then keep the proof of mailing for one year. The landlord cannot make you pay your rent in cash unless you have previously paid your rent with a bad check. If you do pay in cash, however, get a receipt.

## **5** *What happens when my lease runs out?*

Read your lease carefully. It may explain what you must do. For example, the lease may have an

*automatic-renewal* clause. This means that if you are planning to move, you must tell the owner before the lease runs out. The clause applies to the owner as well; he or she also must ask you to move before the lease ends. Otherwise, the lease will be renewed for the same period of time as the original agreement.

**Note:** Automatic-renewal clauses and extension provisions are *voidable* if they do not appear in at least eight-point, boldface type. This is an example of eight-point, boldface type.

However, what if you have a six-month or one-year lease and no automatic-renewal clause? If you pay rent monthly and the owner accepts your rent after the lease is up, the agreement is automatically renewed on a month-to-month basis. If the landlord does not accept your rent when the lease is up, you will have to move out.

The same is true for leases that are not standard six-month or one-year agreements. Some leases simply specify a particular ending date. In such a case, you would be able to stay in the apartment past that date on a month-to-month basis if the owner were to accept your rent payment.

## **6** *Who should make repairs in my home?*

If you, your family or a friend cause the damage, you should complete the repair unless instructed not to by your lease or landlord. For example, if your child breaks a window, you must replace the glass. You can ask the owner or manager to make the repair, but be prepared to pay for it. If you did not cause the damage, however, the owner probably is responsible for the repairs.

The best time to ask for repairs or improvements is before you move in—but after the lease is signed. Walk through the apartment or house with the owner or manager and jot down everything that is wrong with the place. You can also request repairs at that point. You may want to take a friend with you. Your friend can be a witness if you and the owner later disagree on any promised repairs.

It also is a good idea to take pictures of any problems, such as a broken table leg or light fixture

or a chipped bathtub. Both you and your friend should initial and date the photographs. These photos also can help ensure that your security deposit will be returned when you move.

If the repairs are not made by the agreed-upon date, mail a reminder and keep a copy. It is a good idea to put all requests for repairs in writing. Date, sign and keep a copy of each request.

## **7** *Can the owner come into my home without asking me?*

Yes, but only in emergencies. For example, suppose a bathtub overflows in the apartment above yours. The owner could check your apartment for water damage even if you were not home.

The owner can enter your home for certain other reasons as well, but only after giving you a 24-hour written notice and only during normal business hours. For example, if you plan to move, the owner has a right to show the apartment or house to prospective tenants. Or, the owner might want an electrician to check the wiring. The landlord must give you a 48-hour written notice to make a pre-vacancy inspection of your unit.

## **8** *What are the owner's rights?*

The owner has a right to expect you to follow the rules of your rental agreement. You should, for example, pay your rent on time and keep the apartment or house clean. And you should avoid bothering other tenants with noisy parties or a television set turned up full blast.

Also, use the apartment or house only as it is meant to be used. For example, don't run a dry-cleaning business out of a residential apartment.

The owner also has the right to expect you to fix anything you damage. If you break a lamp in a furnished apartment, for instance, you should repair or replace it.

If you don't follow the rules, the owner may have a good reason to ask you to move. And if you do not move, the owner can sue to evict you.

Also, although no one can refuse to rent to people with children, the owner can limit the number

of people living in the apartment.

The owner also has the right to sell the building. If the building is sold, your lease will not change. The owner must either transfer your deposits to the new owner or refund them. If the deposits are transferred, the owner must tell you in writing and give you the new owner's name, address and phone number.

## 9 *What are my rights?*

You may rent your apartment to someone else unless your agreement states otherwise. This is called *subleasing*. If the agreement forbids subleasing, check with the owner and seek approval in writing. Be sure that your subtenant is responsible. If a subtenant causes damage or does not pay the rent, you will have to pay.

Some communities have *rent-control* laws that give you certain protections against rent increases. Such laws usually say when and how much your rent can be raised. Many local governments have *rent board* agencies that can help you with issues involving local rent laws and ordinances.

You also have the right to a decent place to live. The law says that your rental apartment must be livable. If the apartment is not livable – through no fault of your own – you can move. You may not have to pay rent after you move, even though you have a lease. You may also sue the landlord for any rent that you overpaid while living in *untenantable* conditions.

By law, for a place to be unlivable or untenantable, the problem must be substantial and may include:

- a lack of waterproofing and weatherproofing (broken windows, for example),
- poor plumbing,
- insufficient hot and cold running water for bathing and cleaning,
- a lack of heat,

- electrical lighting that is not in good working order,
- unclean grounds and building,
- roaches and rodents,
- too few trash cans for your garbage, or
- floors, stairs and railings that are in disrepair.

## **10** *Can I report the owner if the apartment is unlivable?*

Yes. Let's say the furnace has not worked for six weeks in the middle of winter – and the owner won't fix it (in spite of your phone calls and letters). In this case, you could report the owner to a housing or building inspection department.

What if there are rats or mice in the building? Maybe garbage sits around for a week at a time. Call the county or city health department. A lot of trash in the hallways could be a fire hazard. In such a case, you could report the owner to the fire department.

The government department you call may give the owner a written notice to correct the problem. If there is no improvement, you may be able to sue the owner.

## **11** *What can I do instead of reporting the owner?*

If the problems affect tenantability (see #9), you can make repairs yourself or pay to have them made. Then, you may be able to deduct that money from your rent. You cannot, however, deduct more than the cost of one month's rent for any one repair. And you cannot deduct repair costs more than twice a year.

You could stop paying rent until the repairs are made. However, this can be a risky procedure without legal advice because the owner may sue you. And you probably should put your rent money into an *escrow* account. This will ensure that you have the money to pay the rent after the repairs have been made, or if you have to move.

In either case, write to the owner first and explain what you plan to do. You also must give the owner a reasonable amount of time to make the repairs. Please note that both of these remedies can result in an eviction if they aren't done correctly. Seek legal help before withholding rent or paying for repairs.

If you have a major complaint, it is possible that the other tenants do as well. Arrange a meeting to discuss the problem. Perhaps all of the tenants will sign a letter asking the owner to make the repair or improvement. You may all want to select someone to meet with the owner on behalf of the tenants.

If all else fails, you and your fellow tenants might consider holding a rent strike. But talk to a lawyer before doing so. If you and your fellow tenants have very little income, you might qualify for free legal services. Or you might consider pooling your money and hiring a lawyer. In California, rent strikes are legal only under certain conditions. Even if you do not hold a rent strike, you may need a lawyer's help.

## **12** *Can the owner sue to evict me?*

Yes. In some cases, the owner can sue whether your rental agreement is a lease or a month-to-month rental agreement.

If you have a lease, the owner can try to evict you for such reasons as not paying your rent, violating your rental agreement or creating a nuisance. In these cases, the owner must give you the appropriate 3-day written notice to move before suing to evict you. The owner also might sue to evict you if you break part of the agreement—or if you are asked to leave when your lease runs out and you refuse to do so.

If you have a month-to-month rental agreement and do not live in a unit that is subject to rent control, the owner can give you a written notice to move out even if you have not done anything wrong. If you have lived there for one year or less, you must get a 30-day notice. If you have lived there for more than a year, you must get a 60-day notice. (Although you are responsible for paying rent during the notice

period, if the landlord accepts rent from you to cover a period of time after the notice expires, the landlord has waived the notice.) For more information on your particular situation, you may want to talk to a lawyer.

If you do not move within that time, the owner can sue to evict you. In some communities, however, you can only be evicted if you have done something wrong (like not paying rent, breaking rules or doing something illegal). This also may be true if you live in some types of subsidized housing.

In order to have you evicted, the owner would have to go to court. Such a suit is called an *unlawful detainer* action.

Here is how an eviction suit starts. After you receive either a 3-day, 30-day, 60-day or 90-day notice and that time has passed, the owner will send you a *complaint*. This is a document stating that you are being sued. You have five days—including weekends—to reply to the complaint. You also will receive a *summons*, which tells you when and where to respond. You must reply to the complaint in writing, using the proper court forms. If you do not, the case probably will be decided in the owner's favor.

To try to avoid a lawsuit, you might suggest *mediation*. This means that a *neutral third party* (someone who has nothing to do with the problem) will try to help you and the owner settle your differences.

To obtain a list of local mediation programs in California, visit the state Department of Consumer Affairs' website at: [dca.ca.gov/consumer](http://dca.ca.gov/consumer) (click on *Mediation Programs*).

### **13** *Can the owner lock me out?*

By law, an owner who wants you to move cannot lock you out of your apartment or house—or remove your belongings or any doors or windows. Nor can an owner legally turn off the gas, electricity, heat or water. If any of these things happen, you can take the owner to court.

If you win the case, the owner will have to pay for any damage. For example, the food in your refrigerator may have spoiled because the electricity was turned off. The owner may have to

pay you up to \$100 for each day that the utilities were turned off or at least \$250 for every law that was broken. The owner also may have to pay your lawyer. If you lose the case, however, you may have to pay the owner's lawyer.

## **14** *What can I do if I lose an eviction suit?*

If you lose, you will have to move and you may get a judgment against you to pay the owner's costs of going to court, including attorney fees and back due rent. You also are allowed to *appeal*. This means you can ask a higher court to rehear your case. But you will still have to move, unless the court grants a *stay* or delay until the case is finally decided.

If you do not appeal, you will have to move. Otherwise, the owner can get a *writ of possession*. This is a paper that orders the sheriff to move you out. The sheriff will post a notice to vacate (by a certain date) on your door and you will have to move out by then. If you do not, the sheriff can lock your stuff in the house and force you to leave.

If you move out but leave your belongings behind, the owner must give you 15 days (18 days if the notice comes by mail) to retrieve them. If you fail to claim your things during that time, the landlord may treat them as abandoned property and go through a process of disposing them. If your possessions are worth less than \$300, the landlord may keep them or throw them out. If they are worth more than \$300, the landlord must have a public sale.

## **15** *What can I do about discrimination?*

You may believe that the owner of an apartment or house won't rent to you or is evicting you because of your race, color, religion, medical condition, national origin, ancestry, age, familial status, marital status, source of income, sexual orientation, sex or disability.

If you are right, the owner is breaking the law. He or she cannot refuse to rent an apartment

or house to you based on any of these personal characteristics. It would be discrimination even if the owner simply believes—correctly or not—that you have a particular ethnic background or that you practice a certain religion. If you think you are a victim of such discrimination, write or call the nearest office of the California Department of Fair Employment and Housing or the U.S. Department of Housing and Urban Development (HUD).

*Note:* You should be aware, however, that the owners of housing for senior citizens do not have to accept families with children.

## **16** *How can I find a lawyer to represent me?*

If you do not know a lawyer, ask a friend, co-worker, employer or business associate to recommend one. You may want to ask for a lawyer with some experience in landlord/tenant law.

In your search for a lawyer, you could call a local State Bar-certified lawyer referral service. For an online list of certified lawyer referral services, visit the State Bar's website at [calbar.ca.gov/lrs](http://calbar.ca.gov/lrs). For a recorded message that can provide you with the phone numbers of certified services in your county, call 1-866-44-CA-LAW (442-2529). If you are out of state, you can call 415-538-2250 to hear the same recorded message. Or, check the Yellow Pages of your telephone directory.

State Bar-certified lawyer referral services, which must meet minimum standards established by the California Supreme Court, can assist you in finding the right lawyer for your particular problem. Most of these services offer half-hour consultations for a modest fee.

Attorneys who are members of certified lawyer referral services must carry insurance, agree to fee arbitration for fee disputes, meet standards of experience and be State Bar members in good standing.

Lawyer referral service fees do vary. Don't forget to ask whether there is a fee for the referral or consultation. And if you decide to hire a lawyer, make sure you understand what you will be paying for, how much it will cost and when you will be expected to pay your bill. You may want to talk to several attorneys before you hire one.

In addition, be aware that lawyers are generally required to notify new clients if they do *not* carry malpractice insurance. Such notification must be made when the client hires the lawyer if it is *reasonably foreseeable* that the representation will exceed four hours.

If your income is very low, you may qualify for free or low-cost legal help. You could ask your county bar association if its State Bar-certified lawyer referral service offers free legal advice for those with little income or if it can direct you to a no-cost legal services organization. (California's statewide legal services website – **LawHelpCalifornia.org** – can help you locate a local program as well.)

For more information, see the State Bar pamphlet *How Can I Find and Hire the Right Lawyer?* To find out more about ordering a free copy of this pamphlet and other State Bar consumer education pamphlets, call 1-888-875-LAWS (5297) or send an email to **pamphlets@calbar.ca.gov**. Or visit the State Bar's website – **calbar.ca.gov** – where you'll find the bar's consumer education pamphlets, as well as information on ordering them. The pamphlets also can be ordered in bulk.

**The purpose of this pamphlet is to provide general information on the law, which is subject to change. It is not legal advice. Consult a lawyer if you have a specific legal problem.**

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