

May 10, 2007

**TO:** Conference on Self-Represented Litigants Attendees

**FR:** John Lamb

**RE:** Updates to *California Tenants* Booklet

I prepared these updates to the *California Tenants* booklet for the Department of Consumer Affairs in December 2006. They show revisions to the text made necessary by AB 1169 (Torrico), Stats. 2006, ch. 842 (reinstatement of the 60-day notice requirement to end some periodic tenancies). I am providing conference attendees this unofficial version of the updates to use until the Department publishes the official version on its Website. See the Department's official one-page summary of AB 1169 at [www.dca.ca.gov](http://www.dca.ca.gov).

**Page vii**

Replace the first two headings under Written Notices of Termination with the following:

Thirty-day or sixty-day notice

How to respond to a thirty-day or sixty-day notice

**Page 43**

Replace the last paragraph *before* the heading **Giving the landlord notice** with the following:

There is another risk of using rent withholding: if the tenant doesn't have a lease, the landlord may ignore the tenant's notice of defective conditions and seek to remove the tenant by giving him or her a 30-day or 60-day notice to move. This may amount to a "**retaliatory eviction**" (see pages 74–75).<sup>157</sup> The law prohibits retaliatory evictions, with some limitations.<sup>158</sup>

**Page 47**

Replace the first three paragraphs under the heading **Tenant's notice to end a periodic tenancy** with the following:

**Tenant's notice to end a periodic tenancy**

To end a **periodic rental agreement** (for example, a month-to-month agreement), you must give your **landlord** proper written notice before you move.

You must give the landlord the same amount of notice as there are days between rent

payments.<sup>176</sup> This means that if you pay rent monthly, you must give the landlord written notice at least 30 days before you move. If you pay rent every week, you must give the landlord written notice at least seven days before you move.<sup>177</sup> This is true even if the landlord has given you a 60-day notice to end the rental agreement and you want to leave sooner (see discussion, page 48).<sup>177a</sup>

To avoid later disagreements, date the notice, state the date that you intend to move, and make a copy of the notice for yourself. It's best to deliver the notice to the landlord or property manager in person, or mail it by certified mail with return receipt requested. (You can also **serve** the notice by one of the methods described under "Proper Service of Notices," pages 67-68.)<sup>178</sup>

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<sup>176</sup> *Civil Code Section 1946.1(b), effective January 1, 2007. (Stats. 2006, ch. 842 (AB 1169, Torrico).)*

<sup>177</sup> *Civil Code Sections 1946.1(a),(b), effective January 1, 2007.*

<sup>177a</sup> *Civil Code Section 1946.1(e), effective January 1, 2007.*

<sup>178</sup> *Civil Code Section 1946.1(f), effective January 1, 2007.*

## **Page 48**

Replace the first six paragraphs under the heading **Landlord's notice to end a periodic tenancy** with the following:

### **Landlord's notice to end a periodic tenancy**

A landlord can end a periodic tenancy (for example, a month-to-month tenancy) by giving the tenant proper advance written notice. Your landlord must give you 60 days' advance written notice that the tenancy will end if you and every other tenant or resident have lived in the **rental unit** for a year or more.<sup>181</sup> However, the landlord can give you 30 days' advance written notice in either of the following situations:

- Any tenant or resident has lived in the rental unit less than one year;<sup>182</sup> or
- The landlord has contracted to sell the rental unit to another person who intends to occupy it for at least a year after the tenancy ends. In addition, all of the following must be true in order for the selling landlord to give you a 30-day notice –
  - The landlord must have opened escrow with a licensed escrow agent or real estate broker, and
  - The landlord must have given you the 30-day notice no later than 120 days after opening the escrow, and
  - The landlord must not previously have given you a 30-day or 60-day notice, and
  - The rental unit must be one that can be sold separately from any other dwelling unit.<sup>182a</sup>

The landlord usually isn't required to state a reason for ending the tenancy in the 30-day or 60-day notice (see "**Thirty-Day or Sixty-Day Notice**," page 64). The landlord can serve the 30-day or 60-day notice by certified mail or by one of the methods described under "Proper Service

of Notices,” pages 67-68.<sup>182b</sup>

**NOTE:** In the circumstances described on pages 65-66, a landlord can give you just *three* days’ advance written notice.

If you receive a 30-day or 60-day notice, you must leave the rental unit by the end of the thirtieth or sixtieth day after the date on which the landlord served the notice (see page 65). For example, if the landlord served a 60-day notice on July 16, you would begin counting the 60 days on July 17, and the 60-day period would end on September 14. If September 14 falls on a weekday, you would have to leave on or before that date. However, if the end of the 60-day period falls on a Saturday, you would not have to leave until the following Monday, because Saturdays and Sundays are legal holidays. Other legal holidays also extend the notice period.<sup>182c</sup>

If you don’t move by the end of the notice period, the landlord can file an **unlawful detainer lawsuit** to evict you (see page 68).

What if the landlord has given you a 60-day notice, but you want to leave sooner? You can give the landlord the same amount of notice as there are days between rent payments (for example, 30 days’ notice if you pay rent monthly) provided that –

- § The amount of your notice is at least as long as the number of days between rent payments, and
- § Your proposed termination date is before the landlord’s termination date.<sup>182d</sup>

What if the landlord has given you a 30-day or 60-day notice, but you want to continue to rent the property, or you believe that you haven’t done anything to cause the landlord to give you a notice of termination? In this kind of situation, you can try to convince the landlord to withdraw the notice. Try to find out why the landlord gave you the notice. If it’s something within your control (for example, consistently late rent, or playing music too loud), assure the landlord that in the future, you will pay on time or keep the volume turned down. Then, keep your promise. If the landlord won’t withdraw the notice, you will have to move out at the end of the 30-day or 60-day period, or be prepared for the landlord to file an unlawful detainer lawsuit to evict you.

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<sup>181</sup> *Civil Code Section 1946.1(b), effective January 1, 2007. (Stats. 2006, ch. 842 (AB 1169, Torrico).)*

<sup>182</sup> *Civil Code Section 1946.1(c), effective January 1, 2007.*

<sup>182a</sup> *Civil Code Section 1946.1(d), effective January 1, 2007. For example, a house or a condominium can be sold separately from any other dwelling unit, but the units in a halfplex cannot be sold separately from each other.*

<sup>182b</sup> *Civil Code Section 1946.1(f), effective January 1, 2007.*

<sup>182c</sup> *Code of Civil Procedure Section 12a.*

<sup>182d</sup> *Civil Code Section 1946.1(e), effective January 1, 2007.*

## Page 49

Replace the second to last paragraph *before* the heading **ADVANCE PAYMENT OF LAST MONTH'S RENT** with the following:

Suppose that you are a tenant who participates in the Section 8 housing voucher program. While the lease is in effect, the landlord must have good cause to terminate (end) the tenancy. Examples of good cause include serious or repeated violations of the lease, or criminal activity that threatens the health or safety of other residents.<sup>184</sup> The landlord must give the tenant a 3-day or 30-day or 60-day notice of termination under California law (see pages 64–67), and both the landlord and the tenant must give the public housing agency a copy of the notice.<sup>185</sup> What if the landlord simply decides not to renew the lease, or decides to terminate the HAP (housing assistance payment) contract? In this case, the landlord must give the tenant 90 days' advance written notice of the termination date.<sup>186</sup> If the tenant doesn't move out by the end of the 90 days, the landlord must follow California law to evict the tenant.<sup>187</sup>

## Page 51

Replace footnote 194 with the following:

<sup>194</sup> *Civil Code Section 1950.5(g)(1). The landlord has the option of providing you the itemized statement and any refund to which you are entitled when you or the landlord gives the other a 30-day or 60-day notice to end the tenancy (see pages 64–65), or when the landlord serves you a 3-day notice to end the tenancy (see pages 65–67), or no earlier than 60 days before the end of a lease.*

## Pages 51-52

Replace the carry-over paragraph on pages 51-52 with the following:

The landlord is not required to send you copies of invoices or receipts, or a good faith estimate, if the repairs or cleaning cost less than \$126 or if you waive your right to receive them.<sup>199</sup> If you wish to waive the right to receive these documents, you may do so by signing a waiver when the landlord gives you a 30-day or 60-day notice to end the tenancy (see pages 47-48, 64–65), when you give the landlord a 30-day notice to end the tenancy (see pages 47-48), when the landlord serves you a 3-day notice to end the tenancy (see pages 65–67), or after any of these notices. If you have a lease, you may waive this right no earlier than 60 days before the lease ends. The waiver form given to you by the landlord must include the text of the security deposit law that describes your right to receive receipts.<sup>200</sup>

## Page 62

Replace the second paragraph under the heading **TENANT'S DEATH** with the following:

Now suppose instead that the tenant had a month-to-month tenancy. In this case, the tenancy

is terminated (ended) by notice of the tenant's death.<sup>244</sup> The tenancy ends on the thirtieth day following the tenant's last payment of rent before the tenant's death. No 30-day or 60-day notice is required to terminate the tenancy.<sup>245</sup>

## Page 64

Replace the first paragraph under the heading **WHEN CAN A LANDLORD TERMINATE A TENANCY?** with the following:

### **WHEN CAN A LANDLORD TERMINATE A TENANCY?**

A **landlord** can terminate (end) a month-to-month **tenancy** simply by giving the **tenant** 30 or 60 days' advance written notice. (For an explanation of month-to-month tenancies, see pages 14–16; for an explanation of 30-day and 60-day notices, see pages 48–49 and 64–65.)

Replace the first two paragraphs under the heading **WRITTEN NOTICES OF TERMINATION** with the following:

#### **Thirty-day or sixty-day notice**

A landlord who wants to terminate (end) a month-to-month **tenancy** can do so by properly serving a written 30-day or 60-day notice on the tenant. Generally, a 30-day or 60-day notice doesn't have to state the landlord's reason for ending the tenancy. The **Thirty-Day or Sixty-Day Notice** is discussed on pages 48-49, and proper service of notices is discussed on pages 67-68.

In some localities or circumstances, special rules may apply to 30-day or 60-day notices:

## Page 65

Replace the five paragraphs under the heading **How to respond to a thirty-day notice** with the following:

#### **How to respond to a thirty-day or sixty-day notice**

Suppose that the landlord has properly served you with a 30-day or 60-day notice to terminate the tenancy. During the 30-day or 60-day period, you should either move out or try to make arrangements with the landlord to stay. If you want to continue to occupy the **rental unit**, ask the landlord what you need to do so make that possible. While a landlord is not required to state a reason for giving a 30-day or 60-day notice, most landlords do have a reason for terminating a tenancy. If you want to stay, it's helpful to know what you can do to make your relationship with the landlord a better one.

If your landlord agrees that you can continue to occupy the rental unit, it's important that your agreement with the landlord be in writing. The written agreement might be an attachment to your **lease** or **rental agreement** that both the landlord and you sign, or an exchange of letters between you and the landlord that states the details of your agreement. Having the agreement in

writing ensures that you and your landlord are clear about your future relationship.

If the landlord doesn't agree to your staying, you will have to move out. You should do so by the end of the 30 or 60 days. Take all of your personal belongings with you, and leave the rental property at least as clean as when you rented it. This will help with the refund of your **security deposit** (see "Refunds of Security Deposits," pages 50–60).

If you have haven't moved at the end of the 30 or 60 days, you will be unlawfully occupying the rental unit, and the landlord can file an **unlawful detainer (eviction) lawsuit** to evict you.

If you believe that the landlord has acted unlawfully in giving you a 30-day or 60-day notice, or that you have a valid defense to an unlawful detainer lawsuit, you should carefully weigh the pros and cons of contesting the landlord's likely eviction lawsuit against you if you don't move out. As part of your decision-making process, you may wish to consult with a lawyer, legal aid organization, tenant-landlord program, or housing clinic. (See "Getting Help From a Third Party," pages 76–77.)

### **Page 67**

Replace the first paragraph under the heading **PROPER SERVICE OF NOTICES** with the following:

#### **PROPER SERVICE OF NOTICES**

A landlord's three-day, thirty-day, or sixty-day notice to a tenant must be "served" properly to be legally effective. The terms "**serve**" and "**service**" refer to procedures required by the law. These procedures are designed to increase the likelihood that the person to whom notice is given actually receives the notice.

### **Page 68**

Replace the paragraph *before* the heading **THE EVICTION PROCESS (UNLAWFUL DETAINER LAWSUIT)** with the following:

A landlord can use any of these methods to serve a *30-day* or *60-day* notice on a tenant, or can send the notice to the tenant by certified or registered mail with return receipt requested.<sup>262</sup>

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<sup>262</sup> *Civil Code Section 1946.1(f) effective January 1, 2007. (Stats. 2006, ch. 842 (AB 1169, Torrico)), Code of Civil Procedure Section 1162.*

## Page 82

Add the following after **serve/service**:

**sixty-day notice** – a written notice from a **landlord** to a **tenant** telling the tenant that a periodic **tenancy** will end in 60 days. A sixty-day notice usually does not have to state the landlord’s reason for ending the tenancy. (47-48, 64)

## Page 101 – Index

Add the following under the heading **Eviction**, after “setting aside default judgment:”

sixty-day notice 47, 48, 64, **82**

## Page 102

Add the following under the heading Notice, after “service of:”

sixty-day 47, 48, 64, **82**

## Page 103

Add the following *before* the heading “Small claims court:”

**Sixty-day notice**, see Notice