

INSTRUCTIONS FOR PARTICIPANTS LAWSUITS TO PROHIBIT ABUSE OR PROGRAM MISCONDUCT (Transitional Housing Misconduct Act) (Health and Safety Code section 50580 et seq.)

Read the "General Instructions" first. Then read the *special instructions* for participants on page three.

GENERAL INSTRUCTIONS

WHO CAN GET ORDERS PROHIBITING ABUSE OR MISCONDUCT?

Program operators can get orders. **Program operators** are individuals or organizations that run a transitional housing program. The Transitional Housing Misconduct Act applies only if the housing program

- (1) is run by a government agency, a private nonprofit corporation that receives program funds from a government agency, or an operator hired by one of the above to run the program;
- (2) helps homeless persons obtain the skills necessary for independent living in permanent housing;
- (3) includes regular individualized case management services;
- (4) provides a structured living environment and requires compliance with program rules; **and**
- (5) restricts the occupancy period to not less than 30 days but not more than 24 months.

Only the program operator can ask the court for orders against a participant. A program participant cannot ask the court for orders against a fellow participant, nor can program employees or neighbors of the program site ask for orders. The program operator can, however, petition on their behalf.

TO WHOM DO THESE ORDERS APPLY?

These orders apply to participants in transitional housing programs. A **participant** is someone who lives in housing run by a program operator and who has a contract with the operator. The participant must have been homeless before entering the program.

Someone is a homeless person if, before coming to the housing program, he or she lacked a regular and adequate nighttime residence or the most recent nighttime residence was

- (1) a supervised shelter designed to provide temporary housing; or
- (2) an institution that provides temporary housing for individuals intended to be institutionalized; or
- (3) a place not designed or ordinarily used as sleeping accommodations for humans.

Someone is a **participant** in a housing program if he or she signed a contract with the program as a condition to getting housing. The program operator can get orders only against a participant who has signed a contract that includes

- (1) the housing program's rules;
- (2) a statement of the program operator's right of control and access over the unit occupied by the participant; **and**
- (3) a restatement of the procedures and rights created by the Transitional Housing Misconduct Act.

The program operator can ask for orders against the participant and anyone living with the participant at the program site. The operator must prove program misconduct or abuse, however, for each individual against whom orders are granted.

Restraining orders issued under this act apply only to the persons named in the order. That means that if the court orders only one member of a family to move out of program housing, the rest of the family members may remain in the program (unless they are all minors).

WHEN CAN THE COURT MAKE ORDERS PROHIBITING ABUSE OR MISCONDUCT?

Program operators can ask the court for orders if the participant has engaged in program misconduct or abuse. The participant's conduct is program misconduct if

- (1) the participant intentionally broke the program rules;
- (2) the participant's conduct substantially interferes with the program operator's ability to run the housing program; **and**

(Continued on reverse)

When Can The Courts Make Orders Prohibiting Abuse or Misconduct? *continued*

- (3) the conduct relates to
 - (a) drunkenness, sale or use of drugs, theft, arson, or destruction of another person's property; or
 - (b) violence or threats of violence directed at, and harassment of, immediate neighbors of the program site, program employees, or other participants.

The participant's conduct is abuse if

- (1) the participant did or attempted to attack, strike, batter, or sexually assault other participants, program employees, or immediate neighbors of the program site; or
- (2) the participant threatened to attack, strike, batter, or sexually assault the above individuals.

WHAT KINDS OF ORDERS ARE AVAILABLE TO PREVENT ABUSE OR MISCONDUCT?

There are two kinds of orders a program operator can request--a Temporary Restraining Order ("TRO") or a "permanent" order (Order After Hearing), or both. These both are court orders forbidding someone from engaging in the activity described in the order.

- (1) A Temporary Restraining Order ("TRO") is issued by a judge after a request for a permanent order has been filed, but before there has been a full hearing.
- (2) Permanent orders can be issued only after a full hearing before a judge, where both the participant and the program operator can be represented by attorneys and have the opportunity to present evidence.

TEMPORARY RESTRAINING ORDERS ("TRO") BEFORE THE HEARING

A TRO orders the participant to stop the abuse or misconduct and goes into effect immediately. The order lasts a maximum of five days. The court may not be able to grant a hearing within five days, in which case the order will last until the hearing. To get a TRO the program operator must prove that the participant has engaged in program misconduct or abuse and that great or irreparable harm will result before the hearing if the TRO is not granted.

In limited circumstances, the judge can use a TRO to order the participant to move out. The judge will do this only if it is necessary to protect another participant, a program employee, or an individual who lives within 100 feet of the program site from imminent serious bodily injury. To get a TRO excluding the participant from program housing, the program operator must provide clear and convincing evidence that the participant engaged in abuse and that great or irreparable injury will result before the hearing if the participant is not ordered to move out or stay away from the housing program, or both.

If the participant has been living in program housing under contract for six months or longer, the program operator cannot get a TRO unless an action is pending against the participant or a TRO is already in effect and is subject to further orders. The program operator may still use unlawful detainer procedures or file for a permanent order only.

You must give notice to the participant before asking for a TRO. Notice requires you to show the judge that

- (1) before applying for the TRO you told the participant or the participant's attorney when and where the application would be made; or
- (2) you made a good-faith effort to tell the participant or the participant's attorney; or
- (3) you should not have to give notice because great harm would result to a program operator, participant, or immediate neighbor of the program site before the hearing.

ORDER AFTER HEARING ("PERMANENT" ORDERS)

Temporary restraining orders last a maximum of five days or until the hearing. When the judge issues the TRO, he she will set a date for the hearing on the permanent order (also called the Order After Hearing or "injunction"). A "permanent" order issued after a hearing lasts up to one year.

The program operator seeking the order must have the following papers delivered (served) to the participant at least two days before the hearing

- (1) a copy of the Order to Show Cause (Transitional Housing Misconduct);
- (2) a copy of the Temporary Restraining Orders (if any);
- (3) a copy of the Petition for Order Prohibiting Abuse or Program Misconduct;
- (4) a blank Participant's Response (Transitional Housing Misconduct);
- (5) two copies of a blank Attached Declaration (form MC-031);
- (6) a blank Proof of Personal Service (Transitional Housing Misconduct);
- (7) a copy of these instructions; **and**
- (8) copies of all materials (affidavits and supporting memoranda) to be used in the hearing.

(Continued on next page)

Order After Hearing *continued*

The Order to Show Cause must contain the name and phone number of the Legal Services Office in the county where the petition was filed, and must inform the participant this office may be called for legal advice about responding to the request for court orders.

In limited circumstances the court will make a permanent order for the participant to move out of or keep away from the program site. To get this type of order, the program operator must provide clear and convincing evidence that the participant engaged in abuse and that great or irreparable injury will result if the order is not granted.

WHAT IS NEEDED TO GET THE COURT ORDERS OR TO OBJECT TO THEM?

1. Transitional Housing Misconduct forms, available from the superior court clerk's office or from legal publishers. The court clerk can tell you where to get the forms.
2. A typewriter with which to fill out the forms. The forms should be typed. Some volunteer legal service groups have typewriters you can use, and some libraries offer the use of typewriters for a small fee. If you cannot type, print clearly.
3. Money for a court filing fee, unless the court excuses you from paying. If you cannot afford to pay the court filing fee, ask the clerk for the Information Sheet on Waiver of Court Fees and Costs. If you are a participant objecting to the court orders, you do not have to pay to file your response.
4. Someone 18 years of age or older to deliver (serve) certain papers to the other party. This person must be someone other than yourself, and not an employee of the program.

WHAT FORMS ARE AVAILABLE FOR OBTAINING OR OPPOSING AN ORDER?

1. **Petition for Order Prohibiting Abuse or Program Misconduct ["Petition"]**. This four-page form tells the judge the facts of the program operator's case and what orders the program operator wants the judge to make.
2. **Order to Show Cause and Temporary Restraining Order ["OSC/TRO"]**. The judge signs this order to tell the participant to come to court for the court hearing. It may contain court orders that take effect immediately and stay in effect for up to five days or until the hearing.
3. **Participant's Response ["Response"]**. The participant may file this form to object to the orders the program operator asked the court to make, and to give his or her side of the story.
4. **Order After Hearing ["Order"]**. This is the permanent order or injunction. This form is signed by the court following the hearing. It will expire in one year or less unless the court terminates, modifies, or extends it.
5. **Proof of Personal Service**. This form shows that a participant or program operator has been served with legal papers as required by law.

INSTRUCTIONS FOR THE PARTICIPANT

1. **Legal advice**. If you are served with an Order to Show Cause and Temporary Restraining Order ["OSC/TRO"] and a Petition, you should seek legal advice right away. The OSC/TRO should list the name, address, and phone number of the Legal Services Office in the county where the petition is filed. You may be able to get legal services by contacting this office. If you do not have an attorney, you can also call the attorney's referral service of your local bar association for help.
2. **Read the Instructions**. Whether or not you choose to talk to an attorney, you should read all of these instructions and the other papers you have received.
3. **Obey the Order**. Read the papers served on you very carefully. The Petition tells you what orders the program operator is asking the court to make. The OSC/TRO tells you when to appear in court and may contain a temporary order telling you that you cannot do certain things. **YOU HAVE TO OBEY THE ORDER. IF YOU DO NOT OBEY THE COURT'S ORDERS, CRIMINAL CHARGES MAY BE FILED AGAINST YOU. IF YOU ARE FOUND IN CONTEMPT OF COURT FOR NOT FOLLOWING THE COURT'S ORDERS, THE COURT CAN CHANGE THE ORDERS TO FORCE YOU TO MOVE OUT OF THE PROGRAM'S HOUSING.**
4. **Review the facts**. Read the description of the facts on the Petition very carefully. This is where the program operator tells the judge what he or she thinks happened. If you do not agree with the facts on the petition or you think it would not be fair for the court to grant orders against you, **GO TO THE HEARING**. The place and time of the hearing are on the first page of the form named "Order to Show Cause and Temporary Restraining Order."
5. **Respond to the court**. If you want to fight the petition you should file a Participant's Response. **YOU DO NOT HAVE TO PAY A FEE TO FILE THIS FORM**. A blank copy of the Response should have been given to you with the OSC/TRO.

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Instructions For The Participant *continued*

You can also file and serve statements signed by people who have personal knowledge of the facts. These are called "declarations." You can type these declarations on form MC-031 and attach them to your Response. If you do not know how to prepare a declaration, you should see an attorney.

6. **Serve a copy on program operator.** After you have filed the Participant's Response with the superior court clerk, a copy must be delivered personally or by mail to the program operator or the program operator's attorney.

You cannot serve the program operator yourself. Service may be made by a licensed process server, the sheriff's department, or any person 18 years of age or older, other than you. The person should complete and sign a Proof of Personal Service form. (A blank copy should have been given to you with the OSC/TRO.) You should take the completed form back to the court clerk or bring it with you to the hearing.

7. **Extensions.** If you need more time to find an attorney or to prepare your Response, you must ask the judge for a continuance (extension) by the hearing date shown on the OSC/TRO.
8. **Opposing the Petition.** If you wish to fight the lawsuit, you should file a Participant's Response and also go to the hearing. If you have any witnesses, they also must be present. If you do not attend the hearing, the court may make "permanent" orders against you that will last up to one year. If you can't file and serve a Response (or find an attorney who will), **SHOW UP AT THE HEARING ANYWAY.** At the hearing, explain your difficulties to the judge, and ask to be allowed to tell your side of the case.

**NOTE: See sample filled-in Participant's Response
on pages 5-6.**

(Continued on next page)

Make sure you copy boxes 2, 3, and 4 exactly as they are on the OSC/TRO forms you got from the housing program.

If you do not have an attorney, fill in your name, mailing address, and telephone number. If you have an attorney, the attorney will help you fill out this form. If you need help, call legal aid at the number on the form.

Do not fill in this box. *In Pro. Per.* means you do not have an attorney.

You can find this number on the front page of the OSC/TRO forms that were given to you along with this form. Find the box that says "Case Number" and copy that number exactly into this box.

Address of the court where you are filing your response. If you are not sure of the correct address, call the county clerk.

Housing program name.

Your name.

You can find the hearing date, time, department number, and room number on the first page of the OSC/TRO forms you were given.

Read the Petition, especially item 7c, before you answer.

Mark the box that applies to your case. Do not mark both boxes a and b.

If you marked box b, use this space to explain which acts you did not do.

Mark each box that applies to your case. You can mark both boxes a and b if they both apply.

If you marked box b, use this space to explain why your acts did not violate the rules.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): 1. Danny Doe 200 Hill St., Apt. 16 Big City, California 90135		TELEPHONE NO.: (123) 456-7891	FOR COURT USE ONLY		
ATTORNEY FOR (Name): In Pro. Per.					
SUPERIOR COURT OF CALIFORNIA, COUNTY OF					
2. STREET ADDRESS: 200 Main Street MAILING ADDRESS: P.O. Box 4000 CITY AND ZIP CODE: Anytown, California 90134 BRANCH NAME:					
PROGRAM OPERATOR: Family First Transitional Housing Program					
3. PARTICIPANT: Danny Doe					
PARTICIPANT'S RESPONSE to Petition For Order Prohibiting Abuse or Program Misconduct					
4.	HEARING DATE July 3, 1992	TIME 10:00 a.m.	DEPT. 3	ROOM 765	CASE NUMBER: C-12345

Each participant should file a separate response. (A family may file one response.)

- If your printing is legible, you may handprint this form.
- Your response will be considered by the judge at the court hearing. No filing fee is required.
- You must still obey any orders already granted until the hearing.
- You have a right to ask the judge to postpone the hearing date.
- If you do not appear at the court hearing, the court may grant restraining orders against you that may last up to one year.
- Read the Instructions for Participants before competing this form.

I RESPOND to the Petition or Order Prohibiting Abuse or Misconduct as follows:

If you need additional space, attach form MC-031 (on the reverse side of MC-030). Also use form MC-031 for statements by witnesses. Reference each part on form MC-031 by a number from this form.

1. DENIAL

- a. I deny doing all of the acts stated in item 7 of the petition.
- b. I deny doing some of the acts stated in item 7 of the petition. (Specify acts you deny doing):
(Specify on attached form MC-031 if you need more room, and check this box:)

I did not yell loudly at my wife or disturb other residents. I did not hit my wife or try to push her down the stairs. I did not threaten the night manager.

2. DENIAL OF PROGRAM MISCONDUCT

- a. My acts, if any, did not substantially interfere with the orderly operation of the transitional housing program.
- b. My acts, if any, did not violate the rules and regulations of the transitional housing program (explain):
Specify on attached form MC-031 if you need more room, and check this box:)

If you need more space to write your answer, mark this box and use a separate sheet of paper or form MC-031. Attach any extra paper to this form.

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Form Adopted by the
Judicial Council of California
TH-120 [New July 1, 1992]

PARTICIPANT'S RESPONSE
(Transitional Housing Misconduct)

Health & Safety Code, § 50585(c)

(Continued on reverse)

Housing program name.

Use the same case number from page one of this form.

Your name.

If you marked box 1.b. on page one of this form, you may want to explain here.

Use this space to explain why your acts served a legitimate purpose (box a) or were constitutionally protected (box b).

Read the definition of "Transitional Housing Program" (see "Who Can Get Orders Prohibiting Abuse or Misconduct?" on page one of these Instructions). If your housing does not match the definition, mark this box. Don't forget to explain why in the space below.

When you moved in, the program should have given you a contract. Mark the boxes to show what you did not get.

If you have any other reasons that justify your actions, mark this box and explain what they are.

After you are done, count the number of pages you are attaching to this form and put that number here. Do not include the two pages of this form in that number.

VERY IMPORTANT:

- 1. The date you sign.
- 2. Your signature.

DO NOT FORGET THESE OR ALL YOUR WORK WILL BE WASTED.

Keep a copy for your records. Make sure the court stamps your copy.

PROGRAM OPERATOR: Family First Transitional Housing Program	CASE NUMBER:
PARTICIPANT: Danny Doe	C-12345

3. JUSTIFICATION OR EXCUSE

I have done some or all of the acts of which I am accused, but the actions are justified or excused for the following reasons:

a. My acts served a legitimate purpose (specify):
(Specify on attached form MC-031 if you need more room, and check this box:)

On June 25, 1992, I did tell the night manager to mind his own business because he has been trying to interfere with my marriage to my wife.

b. My acts were constitutionally protected (specify):
(Specify on attached form MC-031 if you need more room, and check this box:)

4. WRONG PROGRAM. Program operator does not operate a "transitional housing program" as defined in Health and Safety Code section 50582(g) (explain):

If you need more space to write your answer, mark this box and use a separate sheet of paper or form MC-031. Attach any extra paper to this form.

5. PROGRAM CONTRACT

- a. I have no contract with the program operator.
- b. The contract does not include the program rules and regulations.
- c. The contract does not include a statement of program operator's right of control over and right of access to my dwelling unit.
- d. The contract does not contain a restatement or summary of the requirements and procedures of the Transitional Housing Participant Misconduct Act.

6. OTHER DEFENSES. I have other defenses or reasons a court order should not be granted (specify):
(Specify on attached form MC-031 if you need more room, and check this box:)

I never got copies of the program rules. The program is not giving me the job training it promised. Also, I just got a new job that starts in a week that I may not be able to keep if I am homeless again.

7. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 2, 1992

Danny Doe

(TYPE OR PRINT NAME)

Danny Doe

(SIGNATURE OF PARTICIPANT)

TH-120 [New July 1, 1992]

PARTICIPANT'S RESPONSE
(Transitional Housing Misconduct)

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