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— LANDLORDS' LEGAL CENTER —

Terminating the Tenancy

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**[https://landlordslegalcenter.com/
2022/12/terminating-the-tenancy/](https://landlordslegalcenter.com/2022/12/terminating-the-tenancy/)**

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IN THIS PRESENTATION WE WILL DISCUSS:

1. Serving Proper Notices and Common Pitfalls
2. Limitations on Terminating Tenancies
3. Navigating Evictions in 2022

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SERVING PROPER NOTICES AND COMMON PITFALLS

- What is the right notice to serve?
- How to serve a notice?
- Do's and Don'ts
- Common mistakes in notices

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WHICH NOTICE DO I USE TO TERMINATE A RESIDENTIAL TENANCY?

- 30 day notice
 - (month to month agreement, less than one year)
- 60 day notice
 - (month to month agreement, more than one year)
- 60 day notice with cause
 - (month to month agreement, more than two years, located in city of San Diego)
 - (month to month agreement, more than one year, AB1482 applies)

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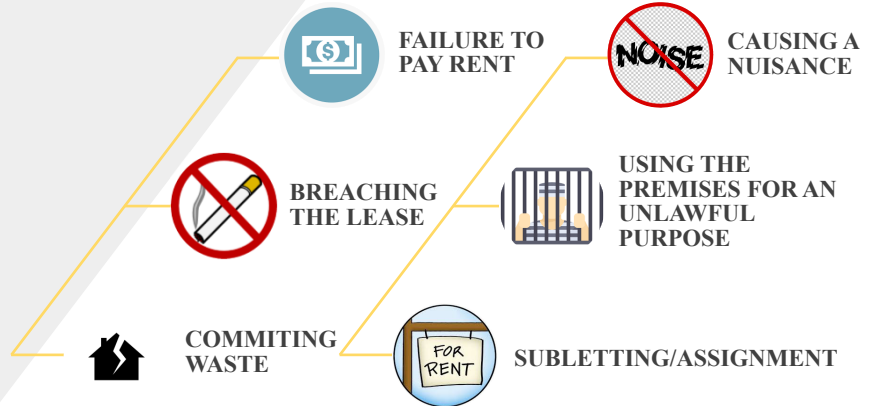
WHICH NOTICE DO I USE TO TERMINATE THE RESIDENTIAL TENANCY?

- 90 day notice
 - (post foreclosure if evicting tenant not owner – cause may apply)
 - (Section 8 must include cause)
- Termination of Fixed Term Lease – Must refer to lease term on termination.

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WHEN CAN I USE A 3-DAY NOTICE?



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HOW DO I SERVE THE NOTICE?

PERSONAL SERVICE

1

Notice handed directly to a named tenant at residence or place of employment.

SUBSTITUTE SERVICE

2

If named tenants are unavailable for personal service at the premises or place of employment, notice may be handed to a person over the age of 18 at either site and mailed to that site (must get name or physical description).

POSTING AND MAILING

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If unable to serve personally or by substitution, notice may be posted on the front door and mailed first-class to the premises.

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SECTION 8 TENANTS | ADDITIONAL REQUIREMENTS

All notices served to Section 8 tenants:

1. Must also be served on the section 8 case representative on the same day the notice is served on the Tenants.
2. Must be served with a Violence Against Women's Act (VAWA) documents along with any termination notice.
3. CARES ACT requires a minimum termination notice of 30 days.

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HOW DO I CALCULATE THE 3-DAY NOTICE PERIOD?

Date Served	Expiration Date
Monday	Thursday
Tuesday	Friday
Wednesday	Monday
Thursday	Tuesday
Friday	Wednesday
Saturday	Wednesday
Sunday	Wednesday

The first day of the notice period begins the day after the notice is served. Weekends and judicial holidays are not included and the notice period cannot expire on a weekend or holiday.

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DO'S AND DON'TS DURING THE 3-DAY PAY OR QUIT TIME PERIOD

- DO accept **full rent** payment if it is offered within 3-day notice period.
- DON'T **accept partial** payments if you want to proceed with the unlawful detainer.
- DON'T agree to allow the tenant to pay or remain in possession beyond the notice period since it will be considered a waiver of the Notice.
- DO go to small claims court if the tenant vacates within the 3-day period & DON'T use the unlawful detainer process.

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DO'S AND DON'TS DURING THE 30/60/90 DAY NOTICE TIME PERIOD

- DO accept Rent up to date of the expiration of notice.
- DON'T accept any rent beyond the expiration of the notice period. Be careful with prorated amounts due for partial months.
- DO inform tenant of right to initial and final move-out inspection.

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DO'S & DON'TS DURING THE 3-DAY NOTICE TO PERFORM COVENANT OR QUIT TIME PERIOD

- DO accept payment if offered in full for a monetary breach.
- DO allow tenant to cure breach.
- DON'T accept payment after the 3-day period.
- DON'T make yourself unavailable to communicate with the tenant during this period.

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COMMON ISSUES WITH NOTICES

- 30/60/90 Day Notice require abandonment language pursuant to Civil Code 1946.1(h)
- Landlord or Landlord's agent needs to sign notice.
- Full correct legal address of the tenant must be listed on the notice.
- Rent periods must be correct.

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LIMITATIONS ON TERMINATING TENANCY

Effective March 2004, the City of San Diego's Tenant's Right to Know put in place just cause for most residential tenancies over two years in length.

Effective January 1, 2020, the Tenant's Protection Act of 2019 implemented just cause for many residential tenancies over a year in length (AB 1482).

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CITY OF SAN DIEGO'S TENANT'S RIGHT TO KNOW ORDINANCE | AT FAULT JUST-CAUSE

The City of
SAN DIEGO



Nonpayment of
Rent



Violation of
Obligation of
Tenancy



Nuisance



Illegal Use



Refusal to
Provide Access

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CITY OF SAN DIEGO'S TENANT'S RIGHT TO KNOW ORDINANCE | AT FAULT JUST-CAUSE

Refusal to Renew Lease.

The tenant has refused to execute a written extension or renewal of the lease within the time required by the lease or state law

- Renewal is for similar term e.g. one year lease
- Contains similar provisions
- Landlord must request renewal in writing
- Applies to lease or rental agreement that terminated on or after April 26, 2004

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CITY OF SAN DIEGO'S TENANT'S RIGHT TO KNOW ORDINANCE | NO FAULT JUST-CAUSE

Correction of Violations.

The landlord, after having obtained all **necessary permits** from the City of San Diego, seeks to recover possession of the rental unit for **necessary repair or construction** when **removal of the tenant is reasonably necessary** to accomplish the repair or construction work.

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CITY OF SAN DIEGO'S TENANT'S RIGHT TO KNOW ORDINANCE | NO FAULT JUST-CAUSE

Withdrawal from the Rental Market.

The landlord intends to withdraw **all** rental-units in **all** buildings or structures on a parcel of land from the rental market.

Owner or Relative Occupancy.

The landlord, or his or her spouse, parent, grandparent, brother, sister, child, grandchild (by blood or adoption), or a **resident manager** plans to occupy the rental unit as their principal residence.

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THE TENANT PROTECTION ACT OF 2019 (AB 1482)

AT-FAULT JUST CAUSE*

1. Default in the payment of rent
2. A breach of a material term of the lease
3. Nuisance
4. Waste
5. Refusal to execute a written extension or renewal of lease



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THE TENANT PROTECTION ACT OF 2019 (AB 1482)

AT-FAULT JUST CAUSE

6. Criminal activity by the tenant
7. Assigning or subletting the premises
8. Refusal to allow owner to enter
9. Using the premises for an unlawful purpose
10. Employee, agent or Licensee's failure to vacate after termination



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THE TENANT PROTECTION ACT OF 2019 (AB 1482)

NO-FAULT JUST CAUSE

- Intent to occupy the residential real property by the owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents.
 - Leases entered on or after July 1, 2020 must include a provision allowing owners to terminate for this cause
 - Does NOT include property manager

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THE TENANT PROTECTION ACT OF 2019 (AB 1482)

NO-FAULT JUST CAUSE

- Withdrawal of the residential real property from the rental market.
- The owner complying with any of the following:
 - (I) An order issued by a government agency or court relating to habitability that necessitates vacating the residential real property.
 - (II) An order issued by a government agency or court to vacate the residential real property.
 - (III) A local ordinance that necessitates vacating the residential real property.

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THE TENANT PROTECTION ACT OF 2019 (AB 1482)

NO-FAULT JUST CAUSE

Intent to demolish or to substantially remodel the residential real property.

“Substantially remodel” means:

EITHER

- 1) replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that **requires a permit** from a governmental agency, OR
- 2) the abatement of hazardous materials, including **lead-based paint, mold, or asbestos**, AND
- 3) requires the tenant to vacate the residential real property for **at least 30 days**.

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BREACH OF LEASE NOTICES AND THE TENANT PROTECTION ACT OF 2019 (AB 1482)

Three Day Notice to Perform & Subsequent Three Day Notice to Quit

1. Three Day Notice to Perform: Before an owner of residential real property issues a notice to terminate a tenancy for just-cause that is a **curable lease violation**, the owner shall first give notice of the violation to the tenant with an opportunity to cure the violation.
2. Three Day Notice to Quit: If the violation is not cured within the time period set forth in the notice, a three-day notice to quit without an opportunity to cure may thereafter be served to terminate the tenancy.

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TERMINATING SECTION 8 TENANCIES

- HUD Tenancy addendum requires just-cause for termination.
- City of San Diego's Tenant's Right to Know Ordinance and California's Tenant's Protection Act of 2019 may also apply.
- CARES ACT requires a minimum termination notice of 30 days.
- VAWA documents **MUST** be served with termination notice.

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NOW THAT THE NOTICE PERIOD HAS EXPIRED CAN I KICK THE TENANT OUT?

NO! Landlord **MUST** use court proceedings to evict the tenant. The landlord **CANNOT** use self-help methods to force the tenant out.

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WHAT IS AN UNLAWFUL DETAINER?

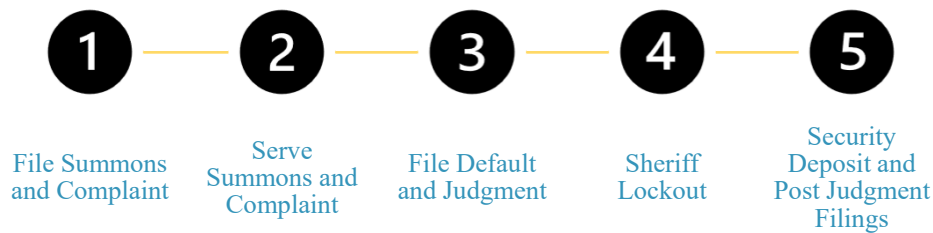
- An unlawful detainer is a “summary” court procedure to evict a tenant.
- Generally, there are two types of cases uncontested cases and contested cases.
- Laws are getting more complicated. We advise you to hire an attorney to file your unlawful detainers.

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UNCONTESTED EVICTION

- Uncontested evictions are the result of a tenant failing to contest the case by filing an answer/response with the court after being served with the summons and complaint.
- Does not require a trial to obtain a judgment for possession.

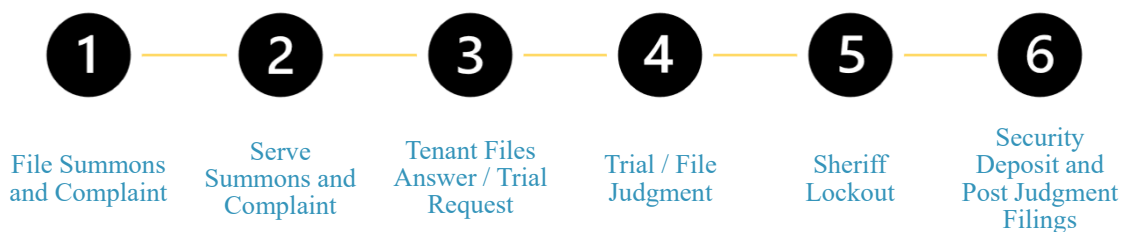


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CONTESTED EVICTION

- Contested evictions are the result of a tenant contesting the case by filing an answer/response with the court after being served with the summons and complaint.
- Requires a trial/hearing to obtain a judgment for possession.



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NAVIGATING EVICTIONS IN 2022

Delays

- Significant back logs in all areas of the unlawful detainer/eviction process
- Before COVID-19 evictions took 45 to 60 days
- Currently evictions are taking 120+ days
- Judicial Counsel requires additional documents be filed

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NAVIGATING EVICTIONS IN 2022

Importance of Settlement

- Wait until Unlawful Detainer has been filed before discussing settlement.
- Settlement can keep the costs of your eviction down and provide you possession faster.
- Judge encourages/requires settlement discussions at trial.

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NAVIGATING EVICTIONS IN 2022

Virtual Trials

- Virtual trials require trial evidence, evidence and witness list be submitted to the court and served on the tenant early.
- Can make settlement more difficult if tenant is unresponsive.
- Virtual trials might soon be coming to an end.

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NAVIGATING EVICTIONS IN 2022

General Civil Cases and Small Claims Cases

- Filing Unlawful Detainers and Civil / Small Claims Cases at the same time can result in a better negotiating position.
- Universal settlement can sometimes be reached.

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QUESTIONS?

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