

SIMONE & BLEVINS

— LANDLORDS' LEGAL CENTER —

CITY OF SAN DIEGO Residential Tenant Protections

Franco Simone, Esq

Lera Blevins, Esq.

3702 4th Ave.

San Diego, CA 92103

(619) 235-6180

info@sbsdlaw.com

RESIDENTIAL TENANT PROTECTIONS

Effective June 24, 2023, the City of San Diego enacted new [Residential Tenant Protections](#).

Ordinance No. [O-21647](#)

This new ordinance amended and replaced the Tenant's Right to Know Ordinance that was enacted in March 2004.

New Law v. Old Law

New Residential Tenant Protections

- ❖ 3+ Month Tenancies*
- ❖ Protections start day 1 of tenancy
- ❖ Relocation Assistance of 2-3 months for no-fault termination
- ❖ Some Houses/Condos are Exempt
- ❖ Regulates Buyout Agreements (Cash for Keys)
- ❖ New Notice Requirements

Old Tenant's Right to Know

- ❖ 2+ Year Tenancies
- ❖ Protections after 2 years
- ❖ No relocation assistance
- ❖ Applied to all Houses/Condos
- ❖ Did not regulate Buyout Agreements
- ❖ No notice requirements prior to termination

RESIDENTIAL TENANT PROTECTIONS

EXEMPTIONS

EXEMPTIONS | § 98.0703 (p. 7-8)

- (a) Transient and tourist hotel occupancy.
- (b) Short-term residential occupancy
- (c) Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income
- (d) Housing subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income
- (e) Mobilehomes subject to the MRL
- (f) Housing accommodations in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly.
- (g) Dormitories.

EXEMPTIONS | § 98.0703 (p. 8-9)

- (h) Landlord/Tenant share bathroom or kitchen facilities and it is the landlord's principal residence
- (i) Single-family residences that are occupied by the landlord, including both of the following:
 - (A) landlord-occupant **rents or leases no more than two units or bedrooms** (includes ADU or junior ADU)
 - (B) A mobilehome.
Ex: LL lives in the main house and rents the ADU.
- (j) Duplex where the landlord occupies the other unit as their principal residence

EXEMPTIONS | § 98.0703 (p. 9)

- (k) Certificate of occupancy within the **previous 15 years**, unless the housing is a mobilehome.

EXEMPTIONS | § 98.0703 (p. 9-10)

(1) **Single Family Homes/Condos:** alienable separate from the title to any other dwelling unit, if both of the following apply:

(1) The owner is not any of the following:

(A) A real estate investment trust.

(B) A corporation.

(C) A limited liability company in which at least one member is a corporation.

(D) Management of a mobilehome park.

(2) Tenants have been provided written notice that property is exempt.

Ex: Single family home, condo, or townhome that the LL does not live in and has provided notice of exemption.



RESIDENTIAL TENANT PROTECTIONS

NOTICES

EXAMPLE NOTICE § 98.0703 (p. 9-10)

Notice of Exemption From Chapter 9, Article 8, Division 7 of the San Diego Municipal Code

“This property is not subject to the just cause requirements of Chapter 9, Article 8, Division 7 of the San Diego Municipal Code. This property meets the requirements of San Diego Municipal Code section 98.0703(1) and the landlord is not any of the following: 1) a real estate investment trust, as defined by California Internal Revenue Code section 856; (2) a corporation; (3) a limited liability company in which at least one member is a corporation; or (4) management of a mobilehome park, as defined in California Civil Code section 798.2.”

(Note: Serve before 1/1/24. Any tenancy commencing after 1/1/24 must state the exemption in the lease)

EXAMPLE NOTICE § 98.0705 (p. 15-16)

Notice to Tenant of Residential Tenant Protections

“California law limits the amount your rent can be increased. See California Civil Code section 1947.12 for more information. Local law also provides that a landlord shall provide a statement of cause in any notice to terminate a tenancy. In some circumstances, tenants who are seniors (62 years or older) or disabled may be entitled to additional tenant protections. See Chapter 9, Article 8, Division 7 of the San Diego Municipal Code for more information.”

(Note: Serve within 90 Days of June 24, 2023 with a copy of the Tenant Protection Guide)

<https://www.sdhc.org/wp-content/uploads/2023/06/Tenant-Protections-Guide.pdf>

RESIDENTIAL TENANT PROTECTIONS AT-FAULT JUST CAUSES



Waste



Nonpayment of
Rent



Violation of
Obligation of
Tenancy



Nuisance



Illegal Use



Refusal to
Provide Access



Assign/Sublet

RESIDENTIAL TENANT PROTECTIONS

AT-FAULT JUST CAUSE § 98.0704(a) (p.10-11)

1. Default in the payment of rent
2. A breach of a material term (3 Day perform + 3 Day Quit)
3. Nuisance
4. Waste
5. Refusal to execute a written extension or renewal of lease
6. Criminal activity by the tenant on the property or common areas

RESIDENTIAL TENANT PROTECTIONS

AT-FAULT JUST CAUSE § 98.0704(a) (p.11-12)

7. Criminal threat to LL or Ts (not required to occur on property)
8. Assigning or subletting the premises
9. Refusal to allow owner to enter
10. Using the premises for an unlawful purpose
11. Employee, agent or Licensee's failure to vacate after termination
12. Tenant failure to vacate after tenant gave notice

Requirements Upon Termination

AT-FAULT JUST CAUSE § 98.0706 (p. 17)

- 3/30/60/90 Day Notice with Cause that includes a description of the cause
- Notice to Commission within 3 business days (applies 30 days after the Commission establishes the submittal portal)
- For breach of a material term, 3 Day Perform + 3 Day Quit

BREACH OF A MATERIAL TERM OF THE LEASE

3 Day Notice to Perform & Subsequent 3 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.

RESIDENTIAL TENANT PROTECTIONS

NO-FAULT JUST CAUSES

- 1
Owner/
Family
Occupancy
- 2
Withdraw
from the
Market
- 3
Government
or Court
Order
- 4
Demolition
or
Substantial
Remodel

RESIDENTIAL TENANT PROTECTIONS

NO-FAULT JUST CAUSE § 98.0704(b) (p. 12-13)

1. Intent to occupy the residential real property by the owner/landlord or their spouse, domestic partner, children, grandchildren, parents, or grandparents.
 - ❖ Leases entered on or after June 24, 2023 must include a provision allowing owners to terminate for this cause
 - ❖ Tenancies in effect prior to June 24, 2023 can add the term
 - ❖ Does NOT include moving in a property manager

RESIDENTIAL TENANT PROTECTIONS

NO-FAULT JUST CAUSE § 98.0704(b) (p. 13-14)

2. Withdrawal of the residential real property from the rental market.
3. The owner complying with government agency or court order
 - (I) relating to habitability that requires vacating the residential real property for at least 30 days.
 - (II) to vacate the residential real property.
 - (III) A local ordinance that necessitates vacating the residential real property.

RESIDENTIAL TENANT PROTECTIONS

NO-FAULT JUST CAUSE § 98.0704(b) (p. 14-15)

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

LL must do the following:

- ❖ post **application for the necessary permits at property** within three business days of submittal of the application;
- ❖ Secure permits necessary for the demolition or substantial remodel; and
- ❖ Serves a copy of the necessary permits with a written termination notice, certified **under penalty of perjury**, stating the reason for termination, the type and scope of the work to be performed, why the work cannot be reasonably accomplished in a safe manner with the tenant in place, and why the work requires the tenant to vacate the residential rental properly **for at least 30 days**.

RESIDENTIAL TENANT PROTECTIONS

4. Intent to demolish or to substantially remodel property (Continued)

“Substantially Remodel” means:

- 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.**

RESIDENTIAL TENANT PROTECTIONS

4. Intent to demolish or to substantially remodel property (Continued)

“Substantially Remodel” does NOT mean:

Cosmetic improvements alone, including painting, decorating, and minor repairs, or other work that can be performed safely without having the residential rental property vacated.

Requirements Upon Termination

NO-FAULT JUST CAUSE § 98.0706 (p. 18-22)

- 30/60/90 Day Notice with Cause that includes:
 - Description of the cause
 - Right to relocation by direct payment or waiver (2 months of actual rent or 3 months if tenant is disabled or senior)
 - Right to receive an offer to renew the tenancy
- Notice to Commission within 3 business days (applies 30 days after the Commission establishes the submittal portal)

RESIDENTIAL TENANT PROTECTIONS

BUYOUT AGREEMENTS

DISCLOSURE PRIOR TO BUYOUT OFFER

Prior to making a Buyout offer, the Landlord shall provide each tenant the following:

- Written disclosure of the tenants' rights under § 98.0707 (p. 24)
- A fully executed copy of the disclosure form within 3 days of signature (note: the LL must keep a copy for 5 years)

EXAMPLE DISCLOSURE PRIOR TO BUYOUT OFFER

DISCLOSURE TO TENANT FOR BUYOUT OFFERS SAN DIEGO MUNICIPAL CODE § 98.0707

Tenant(s) have a right not to enter into a buyout agreement. You may choose to consult with an attorney before entering into a buyout agreement. If you choose not to enter into a buyout agreement the landlord may not retaliate against you for refusing to enter into or negotiate a buyout agreement. Further, all tenants of a residential rental property may refuse to receive future buyout offers by providing landlord written notice of their refusal, which shall be effective for six months, and all tenants of a residential rental property may rescind the refusal to receive future buyout offers by providing landlord written notice of the rescission. You are eligible for relocation assistance and the amount of the required relocation assistance in section 98.0706(c). _____ and _____ are the names of all people authorized to discuss the buyout offer and enter into a buyout agreement on the landlord's behalf.

A copy of this Disclosure was provided to the undersigned on the date listed below:

LANDLORD:

Dated: _____

[Landlord Name]

TENANT:

Dated: _____

[Tenant Name]

BUYOUT AGREEMENT REQUIREMENTS

The Buyout Agreement Must:

1. Be in writing
2. A copy provided to the tenant at the time it is signed
3. Statement of the tenants' rights under § 98.0707 (p. 24) in 14-point font close to the signature blocks of the agreement
4. Translated version if negotiated in a non-English Language

A Buyout Agreement that does not comply with 1-4 is VOID

VOID BUYOUT AGREEMENTS

A Buyout Agreement is VOID IF:

- It does not meet the requirements of § 98.0707(c)(1)-(4)
- The relocation benefits are less than provided by the Residential Tenant Protections

Note: Tenants cannot waive rights to these requirements

EXAMPLE STATEMENT OF TENANTS' RIGHTS IN BUYOUT AGREEMENT

You, the tenant, have a right not to enter into this buyout agreement. If you, the tenant, are entitled to relocation assistance under federal, state or local law, a buyout agreement for less than the amount of the relocation assistance to which you are entitled violates Chapter 9, Article 8, Division 7 of the San Diego Municipal Code and is void. You, the tenant, may choose to consult with an attorney before signing this agreement.

***MUST BE IN 14-POINT FONT CLOSE TO SIGNATURES**

TENANT REMEDIES

A tenant claiming a violation of the Residential Tenant Protections may:

- seek injunctive relief, equitable relief, and money damages, including punitive damages, in a civil action against a landlord
- may raise, as an affirmative defense, any violation or noncompliance in an eviction
- File a civil action for wrongful eviction for damages of not less than three times the actual economic damages.
- Demand not less than three times the required relocation assistance and actual economic damages if the landlord fails to provide relocation assistance.
- Recover attorney's fees and costs (not in an eviction)

RESIDENTIAL TENANT PROTECTIONS

See § 98.0702 Definitions (p.7.)

MAY NOT APPLY TO THE FOLLOWING:

- **Tenancies of less than 30 days:** “Tenancy means the lawful right or entitlement of a tenant to continuously use or occupy a residential rental property for *more than 30 days*.”
- **Lease of 3 months or less:** “A tenancy does not include a lease for a fixed-term of *three months or less*, including any extensions or renewals of that lease for a fixed-term of three months or less.”

QUESTIONS?

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