

*California Edition*

# **LANDLORD TRAINING PROGRAM**

**KEEPING ILLEGAL ACTIVITY OUT OF RENTAL PROPERTY**

**A practical guide for landlords and property managers**

Third California Edition

Developed by Campbell DeLong Resources, Inc.

Based on the original Landlord Training Program manual

Adapted with permission from the original *Landlord Training Program*

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# LANDLORD TRAINING PROGRAM

KEEPING ILLEGAL ACTIVITY OUT OF RENTAL PROPERTY

A practical guide for landlords and property managers

A community-oriented property management approach

Developed by:  
Campbell DeLong Resources, Inc.  
www.cdri.com

Based on the original Landlord Training Program manual

The first California Edition of this manual was developed by  
Campbell DeLong Resources, Inc. in partnership with  
the City of San Bernardino, California

Adapted with permission from the original *Landlord Training Program*

Various parts of this document provide broad descriptions of legal procedure. However, ***no part of this manual should be regarded as legal advice or considered a replacement of a landlord's responsibility to be familiar with the law. If you need legal advice, seek the services of a competent attorney.*** Also, laws change. Information in this manual that is accurate at the time of original publication may be rendered obsolete by the passage of new laws or revised judicial interpretation of existing law.

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The *Landlord Training Program* was originally developed by CDRI (2627 Northeast 33<sup>rd</sup> Avenue, Portland, Oregon 97212; Phone: 503-221-2005; [www.cdri.com](http://www.cdri.com)) in partnership with the City of Portland, Oregon, Bureau of Police and the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions contained within are those of the Chula Vista Police Department or Campbell DeLong Resources, Inc., and do not necessarily represent the official position or policies of the U.S. Department of Justice.

***About this Third California Edition:*** This manual follows the text of the manual developed by Campbell DeLong Resources, Inc. (CDRI) for the City of San Bernardino in 1996 with these notable exceptions: CDRI has removed many, but not all, of the city-specific references in the original and inserted language that has been updated in other versions of the National Landlord Training Program manual since the City of San Bernardino's manual was first created in 1996. We have also provided updates to information based on more recent changes in California law. CDRI thanks the City of San Bernardino for sharing of current program information for this project.

This third edition varies from the second edition in this respect only: it includes information relating to changes in law that take effect in January of 2003 regarding new requirements for written notice to enter dwelling units and the use of longer (60-day) no-cause notices for tenancies that have lasted more than one year.

**While the following information takes into account statewide landlord/tenant issues, local laws passed by some California counties and cities place additional restrictions on landlord/tenant practices. Landlords should be familiar with the requirements of local ordinances prior to implementing the suggestions in this document.**

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We request that any errors or significant omissions be noted and forwarded to the authors so that corrections in future versions may be made.

**For additional information about the Chula Vista Police Department's project to reduce crime and disorder and improve quality of life at the city's apartment communities, please contact Karin Schmerler, Senior Public Safety Analyst, at the Chula Vista Police Department, 315 Fourth Avenue, Chula Vista, California 91910, 619-409-5410, [kschmerler@chulavistapd.org](mailto:kschmerler@chulavistapd.org) or go to the project website at [www.chulavistapd.org/safeapts](http://www.chulavistapd.org/safeapts).**



## FOREWORD

Chronic drug dealing and other illegal activity can reduce a neighborhood to a mere shell of the healthy community it once was. In our frustration, we often look only to the police or “the system” for solutions and forget that neighbors and landlords have tremendous power over the basic health of a community.

To be sure, both city government and police have a critical responsibility, but we as citizens landlords, tenants, and homeowners, remain the foundation that makes it all work.

Citizens decide which problems require action. Typically, a city responds only after citizens recognize and report illegal activity. When a problem arises, one of the first and most important decisions is made by the affected homeowners, tenants, and landlords: ignore it, run from it, or do something about it. Each of us plays a different role. Each bears a responsibility to keep a community strong.

The most effective way to deal with drug activity and other crime on rental property is through a coordinated effort with police, landlords, and neighbors. Efforts are underway that encourage neighbors to take on more of their responsibility for preventing crime on their blocks. Efforts are underway to improve the way police address problems with drug activity in residential neighborhoods. What you can do is learn how to keep illegal activity off your property and make a commitment to removing or stopping it the moment it occurs.

The intention of this manual is to help you do just that—to help honest tenants rent from responsible landlords, while preventing those involved in illegal activity from abusing rental housing and the neighborhoods in which it stands.

We know that abuses of the landlord/tenant relationship can come from both sides. We also know that most landlords want to be fair and that most tenants are good citizens. Responsible property management begins with the idea that it will benefit the whole community. If the information given herein is used responsibly, all of us—tenants, landlords, and owner-occupants will enjoy safer, more stable neighborhoods.

Thank you for participating in the Landlord Training Program.

## **ACKNOWLEDGMENTS**

Chula Vista's Apartment Safety Project was a joint effort of the Chula Vista Police Department and the Chula Vista City Attorney's Office. This version of the manual was updated by Carol Trujillo, a deputy city attorney in Chula Vista. The Apartment Safety Project was funded by a 2-year federal grant from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, from April 2010 to April 2012. The goal of the project was to improve the quality of life for apartment residents and reduce repeat police calls. The project involved analysis of police calls at the city's 339 apartment communities of 8 units or more. Additionally, the project involved outreach to apartment managers in Chula Vista and to residents of the complexes with the highest ratio of police calls, development of free resources for managers, and free training on best practices for managers. This manual was a valuable part of outreach and training.

The City of Chula Vista thanks Ms. J. Kathleen Belville, managing partner of Kimball, Tirey & St. John LLP for her contributions to this manual. Ms. Belville, an attorney, and the law firm Kimball, Tirey & St. John are well-known experts in California landlord-tenant law. Ms. Belville generously donated her time and expertise to review and make improvements to revisions to this manual reflecting California law. Ms. Belville's contributions ensure that this manual will continue to be a useful resource for landlords in Chula Vista and in California.

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## POINTS TO CONSIDER

*Community-oriented property management is also good business.*

Landlords and property managers who apply the active property management principles presented in this manual, and in the accompanying training, have consistently seen improvements in the quality of their rental business. Applying the information presented in this training can result in significant benefits to each of the three interest groups in a residential neighborhood: Whole communities can become safer, residents can enjoy better housing, and landlords can enjoy greater business success. Here's how it works:

### *Costs of Criminal Activity in Rentals*

When criminals operate out of rental property, neighborhoods suffer and landlords pay a high price. That price may include:

1. Declines in property values — particularly when the activity begins affecting the reputation of the neighborhood.
2. Property damage arising from abuse, retaliation, or neglect.
3. Toxic contamination and/or fire or water damage resulting from drug manufacturing or grow operations.
4. Civil penalties, including loss of property use for up to one year, and property damage resulting from police raids.
5. Loss of rent during the eviction and repair periods.
6. The fear and frustration of dealing with dangerous tenants.
7. Increased resentment and anger between neighbors and property managers.

### *Benefits of Active Management*

Active management can prevent much of the rental-based crime occurring today. Developing an active management style requires a commitment to establishing a new approach. Landlords and managers interviewed for this program, who have made the switch to more active management, consistently report these rewards:

1. A stable, more satisfied tenant base.
2. Increased demand for rental units — particularly for multi-family units that have a reputation for active management.
3. Lower maintenance and repair costs.
4. Improved property values.
5. Improved personal safety for tenants, landlords, and managers.
6. The peace of mind that comes from spending more time on routine management and less on crisis control.
7. Appreciative neighbors.

These benefits also result in a lower risk of legal liability in suits by neighbors for private nuisance and interference with their business, from tenants for failure to provide “quiet enjoyment” or habitability, from employees for being subjected to harassment, and from any individual for personal injury.



## PREPARING THE PROPERTY

*Make the environment part of the solution.*



### ADVICE WE WERE GIVEN:

“Drug people don’t like to be seen. They can set up anywhere, but the farther they are from the manager’s office, or the more hidden the house is from view, the better they like it.” — Police officer.

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### The Basics

Make sure the aesthetic and physical nature of the property is attractive to honest renters and unattractive to dishonest ones.

### Keep the Property up to Habitability Standards

Maintaining housing standards is important to the public welfare and it protects against neighborhood decay. In addition, a substandard rental unit is more likely to attract problem tenants — it announces to potential criminals that the landlord’s standards are low and that inappropriate tenant behavior is likely to be overlooked.

Also, eviction of a knowledgeable problem tenant from a poorly maintained unit can be both time consuming and expensive. Landlord/tenant laws generally protect tenants from retaliation if the tenant complains that the landlord has not complied with minimum housing standards. If a landlord attempts to evict a problem tenant from a substandard unit, a court may be confronted with having to weigh the behavior of a problem tenant against that of a problem landlord. So in effect, landlords who fail to meet their responsibilities under the law may find that they have compromised their rights under the law as well.

Before renting your property, make sure it meets applicable local maintenance code standards, the habitability requirements of California landlord/tenant law, and — if you rent to Section 8 tenants — the U.S. Department of Housing and Urban Development (HUD) standards for “decent, safe, and sanitary” housing. For more detail, see California Civil Code 1941.1.

## “CPTED” Defined

Crime Prevention Through Environmental Design, known as CPTED (pronounced “*Sep Ted*”), is a field of knowledge developed in response to research demonstrating that the architecture of some buildings deters crime while that of others encourages it. These concepts were originally designed to help reduce crime *to* a property (e.g., a burglar breaking in). They are now known also to help prevent crime *from* a property (e.g. drug dealing, drug manufacturing, illegal gang activity).

*Lighting, landscaping, and building design should combine to create an environment where drug dealers, burglars, and other criminals don't feel comfortable.*

Essentially, it is important that lighting, landscaping, and building design combine to create an environment where drug dealers, burglars, and other criminals don't feel comfortable. Basic steps include making it difficult to break in, closing off likely escape routes, and making sure public areas can be easily observed by nearby people as they go about their normal activity. The four basic elements of CPTED:<sup>1</sup>

- **Natural Surveillance.** The ability to look into and out of your property. Crime is less likely to happen if criminals feel they will be observed. Examples: Keep shrubs trimmed, so they don't block the view of windows or porches. Install glass peepholes so children and adults can see who is at the door *before* they open it. Prune tree branches that hang below six feet. Install low-energy-usage outdoor lighting along the paths. Install motion-activated lights in private areas such as driveways. Keep drapes or blinds open during the day; leave porch lights on at night.
- **Access Control.** Controlling entry and exit. Crime is less likely to happen if the criminal feels it will be hard to get in or that escape routes are blocked. Ranges from as simple as a chain across the driving path to a 24-hour guard station or remote-activated gate. Applies to individual apartments too: deadbolt locks, security pins in windows and sliding-glass doors. In high rise apartments, the “buzzer” for opening the front door from inside an apartment is an access control device.
- **Territoriality.** Making a psychological impression that someone cares about the property and will engage in its defense. Conveying territoriality is accomplished by posting signs, general cleanliness, high maintenance standards, and residents who politely question strangers. Signs that tell visitors to “report to the manager,” define rules of conduct, warn against trespassing, or merely announce neighborhood boundaries are all part of asserting territoriality. In other examples, cleaning off graffiti the very next day or painting a mural on a blank wall both send a message that minor crime won't be overlooked.
- **Activity Support.** Increasing the presence of law-abiding citizens can decrease the opportunities for criminals. Neighborhood features that are not used for legitimate activities are magnets for illegal activities. Organizing events or improving public services in parks and school yards, holding outdoor gatherings on hot summer nights, and accommodating bicycles, joggers, and fitness walkers are all examples.

How these concepts are best applied in a given property depends on many factors, including the existing landscaping, building architecture, availability of resident managers, management practices, presence of security personnel, desires of law abiding residents, and more.

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<sup>1</sup> Although research on CPTED goes back decades, the description given here is based on information provided by the Tucson, Arizona Police Department's “Safe By Design” program.

## Keep the Property Visible, Control Access

The following are some recommended “first steps” for making “CPTED” changes to rental property. Taken alone, few of the following elements will have a significant impact. Taken together, they will stop some operators from wanting to move into the property, and will make it easier for neighbors (or surveillance teams) to observe and document illegal activity should it start up. Initial steps include:

- **Use lighting to its best advantage.** Install photosensitive lighting over all entrances. Buyers, sellers, and manufacturers of illegal drugs don’t like to be seen. At minimum, the front door, back door, and other outside entrance points should be equipped with energy-efficient flood lighting that is either motion or light sensitive — made to go on for a few minutes when a person approaches or to go on at sunset and stay on till dawn. Backyards and other areas should also be illuminated as appropriate. While lights should illuminate the entrances and surrounding grounds, they should not shine harshly into windows — either yours or the next-door neighbor’s. Be sure applicants understand that the lighting is part of the cost of renting — that it must be left on.

In apartment complexes make sure that all walkways, activity areas, and parking lots are well lit, especially along the property perimeter. Covered parking areas should have lighting installed under the canopy. All fixtures should be of vandal-resistant design. Landscape planning should take into account how future plant growth will impact lighting patterns.

- **Make sure fences can be seen through.** If you install fencing, wrought iron types are best because they limit access without also offering a place to hide. They also do not provide an easy surface for graffiti. Wood fencing can also be used effectively, provided wide gaps are left between the boards. In some cases you might also consider a lower fence height — for example, four feet high instead of six. Consider replacing, or modifying, wood fences that have minimal gaps between boards. Keep hedges trimmed low.
- **Keep bushes around windows and doorways well trimmed.** Bushes should not impair the view of entrances and windows. Tree branches should also be trimmed up from the ground so as to discourage the possibility of a person hiding.
- **Post the address clearly.** Only the criminal will benefit if the address is difficult to read from the street. When address numbers are faded, hidden by shrubs, not illuminated at night, or simply falling off, neighbors will have one more hurdle to cross before reporting activity and police will have more difficulty finding the unit when called.

Large apartment complexes should have a permanent map of the complex, including a “you are here” point of reference, at each driveway entrance. These maps should be clearly visible in all weather and well lit. If the complex consists of multiple buildings, make sure building numbers can be read easily from any adjacent parking area, both day and night. Also, make sure that rental units are numbered in a logical and consistent manner to make it possible for officers to locate the unit as rapidly as possible if called to it.

- **Control traffic flow and access.** In larger complexes, control access points to deter pedestrian passersby from entering the property. Then do the same for automobile traffic. People involved in criminal activity prefer “drive through” parking lots — those with multiple exits. Consider blocking some parking exits, adding fencing, and rerouting traffic so all automobile and foot traffic, coming and going, must pass the same point — within view of the manager’s office.

If more control is needed, issue parking permits to tenants. Post signs forbidding cars without permits to use the lot. Towing companies that specialize in this type of business can provide you with signs, usually for a nominal setup fee. Depending on the availability of street parking for guests, either deny

guest parking altogether or limit it to specific spaces. Be consistent in having violators towed away, in accordance with California Vehicle Code section 22658. Remember, it is your parking lot, not a public one.

- **Before building, design for a strong sense of community.** Each of the other steps described in this section should be integrated into building plans to help design a safer rental unit from the start. In addition, for apartment complexes in particular, building plans should include design elements that will help foster a sense of community. Recreational areas and other community facilities can help encourage neighbors to become acquainted. Building layouts should nurture more personalized, neighborhood environments over those that may reinforce feelings of isolation and separation from the community.

## Keep it Looking Cared For

Housing that looks cared for will not only attract good tenants — it will also discourage many who are involved in illegal activity. Changes that help communicate “safe, quiet, and clean” may further protect the premises from those who want a place where chronic problem activity might be tolerated. While these approaches are useful in any type of rental, because of the day-to-day control that apartment owners have over the common areas of their property, the following approaches can make a particularly strong difference in multi-family complexes:

- **Remove graffiti fast.** Graffiti may be the random work of a juvenile delinquent, or the work of a gang member marking territory. Regardless, it serves as an invitation for more problems and it can demoralize and intimidate a neighborhood. If you believe graffiti may be gang related, photograph it, and call the police. Then remove it or paint it over. Remove it again if it reappears — do not let it become an eyesore.
- **Repair vandalism.** As with graffiti, an important part of discouraging vandalism is to repair the problem fast. If the vandalism appears to be directed against you or your tenants, the police should be advised immediately and additional approaches discussed to addressing the situation.
- **Keep the exterior looking clean and fresh.** Fresh paint, well-tended garden strips, and litter-free grounds help communicate that the property is maintained by someone who cares about what happens there.

## APPLICANT SCREENING

*“An ounce of prevention...”*



### COMPLAINTS WE HAVE HEARD:<sup>1</sup>

“People say you should screen your tenants. You can’t. The applicants lie about their previous landlord — they give you a fake address and the phone number of their brother. You call up the brother, he plays along and you never discover they were evicted at the last two houses they rented.”

“I thought I was calling the previous landlord and it was the applicant’s parents — and the parents played along. It ended up in eviction, some months later.”

“We can’t screen tenants worth anything. If you don’t do it right, you could be sued for discrimination. So you check to see if they have income and that’s it.”

### ADVICE WE WERE GIVEN:

“I went to a meeting for landlords about these issues. I was surprised — most people in the room couldn’t understand why they were getting bad tenants. They just couldn’t see that there are ways to keep that from happening.”

“Most landlords, even some ‘pros,’ are still practicing the old way of doing things — they take a social security number, make one phone call, and rent to the person. Then they wonder where the problems are coming from. Well the old methods don’t work anymore.”

“I’ve just quit relying on character judgment. For managing rental property, it doesn’t work. I have a set application process, written down. Applicants must meet all the criteria. If they do, I rent to them. If they don’t, I don’t. It is simple, legal, and fair. At this point, every one of my properties has good people in it.”

“Many landlords are frightened of the fair housing laws. Some believe they can’t screen at all. If landlords establish a fair screening procedure and follow it equally for each applicant, they will have a very strong case against discrimination lawsuits.”

“When I call previous landlords to verify an applicant’s record, most are surprised to get a screening call from another landlord — apparently it happens too rarely.”

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## The Basics

Attract honest tenants, while discouraging dishonest applicants from applying. Have a backup system to help discover if a dishonest person has applied. Use a process that is legal, simple, and fair.

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<sup>1</sup> Unless noted, quotes are from landlords or professional property managers. Note that some “complaints” contain inaccurate or incomplete assumptions about legal rights or procedures.

## Overview

There are two ways to screen out potentially troublesome tenants. The goal is to set up a screening process that will attract every good applicant, while discouraging — or discovering — every problem applicant. The two basic elements to effective screening:

1. **Encourage self-screening.** Set up situations that discourage those who are dishonest from applying. Every criminal who chooses not to apply is one more you don't have to investigate.
2. **Uncover past behavior.** More often than not, a thorough background check will reveal poor references, an inconsistent credit rating, or falsehoods recorded on the application.

The goal is to weed out applicants planning illegal behavior as early as possible. It will save you time, money, and all the entanglements of getting into a legal contract with people who may damage your property and harm the neighborhood.

For the following steps to be most effective, it is just as important that applicants actually read and understand the rules and the process as it is that you implement the process in the first place. Implementing elements of the following suggestions may help protect you legally. Making sure that an applicant knows your commitment to the process may help prevent problems before they have a chance to grow.

Also, a word of caution: If you are looking for a one-step solution, you won't find it here. There are no "magic" phone numbers you can call to get perfect information about applicants and their backgrounds. Effective property management requires adopting an approach and attitude that will discourage illegal behavior, while encouraging the stabilization, and then growth, of your honest tenant base. What makes the following process so effective is not any one step, but the cumulative value of the approach.

## Applicant Screening, Civil Rights, and Fair Housing

Landlords are sometimes confused over how much right they have to turn down applicants. A few even believe that civil rights laws require them to accept virtually any applicant. This is not the case.

Civil rights laws are designed to protect the way applicants are screened and to make sure that all qualified applicants feel equally invited to apply. Federal fair housing guidelines prohibit discrimination based on race, color, religion, sex, handicap, national origin, or familial status (presence of children). In addition to those characteristics, California law<sup>1</sup> specifically adds pregnancy, childbirth or conditions related to them, as well as gender; gender identification; gender expression; genetic information; ancestry; age;<sup>2</sup> sexual orientation; source of income, marital status, and [note: same as handicap]. California law also prohibits discrimination based on a person's medical condition; personal characteristics, such as a person's physical appearance or sexual orientation that are not related to the responsibilities of a tenant;<sup>3</sup> or a perception of a person's membership in a protected class, or a perception that a person is associated with another person who may have any of these characteristics.<sup>4</sup> Further, California's Unruh

*Nothing in the law forbids screening based on guidelines that relate to lease compliance, and applying those guidelines equally to all applicants.*

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<sup>1</sup> California Civil Code, Section 51 "Unruh Civil Rights Act," Government Code Section 12955 "Rumford Act."

<sup>2</sup> Regarding age discrimination, note that some legally-defined senior citizen housing communities are exempt.

<sup>3</sup> California Civil Code Sections 51, 51.2, 53; *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142 [278 Cal.Rptr.614].

<sup>4</sup> Government Code Section 12955(m), Civil Code Section 51.

Civil Rights Act is interpreted by courts to include “arbitrary discrimination” — essentially discrimination based on factors that would be unrelated to the person’s ability to comply with the rental agreement, so such issues as sexual orientation and source of income<sup>1</sup> would generally be inappropriate screening criteria as well. Some authorities also interpret the Unruh Act as covering such areas as occupation and avocation (hobbies). Note also, in a related issue, California law limits the ability of a landlord to deny rental on the basis of waterbed ownership.<sup>2</sup> The purpose of these laws is to prevent discrimination on the basis of issues that are unrelated to a person’s qualifications to be a good tenant. Nothing in the law forbids you from setting screening guidelines for issues that *do* relate to tenant lease compliance and applying them equally to all applicants.

Keep in mind that *every* person belongs to these various classes — each of us can be defined in terms of our race, color, sex, or national origin, for example. So any time you deny an applicant, you have, in a sense, denied someone who belongs to a protected class. The question is whether or not you treat applicants or tenants adversely *because* of the class to which they belong. If the criteria you set are blind to protected class issues or other issues that are unrelated to a person’s qualifications to be a good tenant, and you apply your criteria consistently, you may turn down applicants who do not measure up.

The key lies in making sure your process is fair — that it neither directly nor indirectly discriminates inappropriately. To comply, you should design a fair process and apply it consistently and equally to all applicants. The following examples are consistent with federal fair housing guidelines:

- You may have a rule that requires all applicants to show a government-issued photo I.D., and you could turn down applicants who cannot produce a photo I.D. The practice becomes illegal when you apply the rule inconsistently — requiring I.D. from people of one class but not from those of another. Credible I.D. issued by other countries should be considered. There is a controversy about one particular form of I.D. from Mexico, called the matricula consular card. Some authorities opine that it is not as credible as other options from that country. A risk management decision should be made with regard to refusal of any government I.D.
- You could give a document to all applicants that outlines community rules of the property and warns against residents and their guests engaging in nuisance activities or crimes on the property. The practice becomes illegal when you hand it to applicants of one class, but not of another. Should you develop such a document, also make sure the wording used does not discourage members of a protected class from applying.
- You could have a written policy of refusing to rent to anyone who lies to you during the application process or provides false information on the application. Tenant’s rights advocates could argue that the lie or misrepresentation should relate to a “material” issue, so again, there is a risk management decision to be made.

Setting relevant criteria, holding all applicants to the same standards and documenting the process should prevent or resolve most fair housing concerns. By the consistent use of such guidelines you can retain full and appropriate control over who lives in your rental units and who does not. One caveat to note is that unintentional discrimination can sometimes be alleged because of a legal theory called “disparate impact,” which can occur if a policy which appears neutral has a disparate impact on one or more protected classes when it is implemented.

Finally, as you study the letter of the law, keep its spirit in mind as well. The sooner we remove the types of discrimination that weaken our communities, the sooner we can build a stronger, more equitable society.

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<sup>1</sup> Note that source of income discrimination was added to Government Code Section 12955 in 1999 and is now expressly forbidden by law.

<sup>2</sup> Denial based on waterbed possession is prohibited in buildings constructed after 1/1/73. See Civil Code, Section 1940.5 — for details.

## Written Tenant Criteria: What to Post

Many of the attorneys and legislative authorities interviewed for this program recommend developing written rental criteria and posting a copy of those criteria in your rental office. If you do not have a rental office that all applicants visit, they suggest attaching a copy of the criteria to every application you give out.

If you are going to use written criteria, remember to have applicants read the document. Posting information alone is of limited prevention value unless applicants know it is there.

The following is intended as a “generic” example of information a manager might post and direct each applicant to read. The intent is to encourage every honest tenant to apply, while providing dishonest applicants with an early incentive to seek housing elsewhere. Every criminal who doesn’t apply is one more you don’t have to deal with.

By itself this information will scare off only a few people involved in illegal activity. Most have heard tough talk before. Many expect landlords to be too interested in collecting rent to care about applicant screening. It is important to follow through in word and action — continually reinforce the point that you enjoy helping honest tenants find good housing by carefully screening all applicants, and then actually screen them.

While we have attempted to make sure the following section adheres to both Federal and California law, there may be criteria listed that do not meet the requirements of some local civil rights laws. Further, complying with federal and local civil rights laws involves much more than the language used in the applicant screening process. If you are not familiar with your fair housing responsibilities, seek information from a local rental housing association or from an attorney who specializes in the subject.

*Also, the following is only an example intended to show various types of rules that might be set. You should adjust the criteria as appropriate for your own needs. Whatever criteria you set, have them reviewed by an attorney familiar with current landlord/tenant issues before you post them.*

### **Introduction**

Here it is important to “set the tone” for your applicants — make sure that good applicants want to apply and that bad applicants may begin to think twice. Here’s one approach:

We are working with neighbors and other landlords in this area to maintain the quality of the neighborhood. We want to make sure that people do not use rental units for illegal activity. To that end, we have a thorough screening process.

If you meet the application criteria and are accepted, you will have the peace of mind of knowing that other new renters in this area [apartment complex] are being screened with equal care, and as a result, there may be a reduced risk of illegal activity occurring in the area.

Please review our list of criteria. If you feel you meet the criteria, please apply.

Please note that we provide equal housing opportunity: *we do not discriminate on the basis of race, color, religion, sex, handicap, national origin, familial status, ancestry, age, marital status, source of income, sexual orientation, gender, gender identification, gender expression, genetic information or other factors that are unrelated to legitimate business concerns.*

## Screening Criteria

✓ **A complete application.** One for each adult (18 years of age or older, or emancipated minors). If a line isn't filled in, or the omission explained satisfactorily, we will return it to you.

To the person contemplating illegal activity, this requirement will communicate a very basic message — that you will actually screen your applicants. That message alone will turn away some. Also, this criterion helps to make sure that every application has enough information for you to make an informed decision.

One of the simpler methods for hiding one's financial history is to “forget” to fill in one's social security number or date of birth on the application form. Without a name, and date of birth, credit checks cannot be run. California law<sup>1</sup> provides that landlords may not inquire into an applicant's citizenship or legal status. Thus, asking for a social security number is acceptable. But because one can be in the country legally without a social security number, refusing to process an application without one could create disparate impact based on national origin. If your usual screening company does not have the capability to screen without a Social Security number, it is recommended that you consult another company for the few times this issue arises.

This rule should include a requirement that you to receive an application from each adult household member. This prevents married couples from being treated differently from roommates and insures that you get information on everyone, not just those with good rental history. People involved in illegal activity may have relatives and roommates who still have clean credit or a good rental history. The obvious approach for such people is to have the person with the good rental history apply and then follow that person into the unit. You have a right to know who is planning to live in the unit, so require an application and verify the information for each adult.

✓ **Two pieces of I.D. must be shown.** We require a photo I.D. (a government issued photo identification card) and a second piece of I.D. as well. Present with completed application.

Note that the second piece of identification does not have to be very “official” — generally, a credit card, student ID card, or many other types of cards will do. A person who carries false identification may not have *two* pieces of false I.D. with the same name on it. Be aware that there could be disparate impact again based on national origin and perhaps disability.

✓ **Rental history verifiable from unbiased sources.** If you are related by blood or marriage to one of the previous landlords listed, or your rental history does not include at least two previous landlords, we will require: a qualified co-signer on your rental agreement (qualified co-signers must meet all co-signer screening criteria) or an additional security deposit of X amount.

It is your responsibility to provide us with the information necessary to contact your past landlords. [This creates a challenge because young persons might not have any rental history, or older people might have uncooperative or absent previous landlords]

If you owned — rather than rented — your previous home, you will need to furnish mortgage company references and proof of title ownership or transfer.

Variations of this rule have been used by many landlords to address the issue of renting to those who do not have a rental history or those who say “I last rented from my mother (or father, aunt, or uncle).” This

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<sup>1</sup> California Civil Code section 1940.3

makes it harder for a dishonest applicant to avoid the consequences of past illegal behavior — while loyal relatives may say a relation is reliable, they might think twice about co-signing if they know that isn't true. However, remember that many good applicants have rented previously from a relative. The intent is not to turn away people who rent from relatives. It is to make sure that, as you have with all other applicants, you have a method for trying to ensure that the applicant is likely to comply with his or her contract and reducing the chance of loss for the landlord. Asking someone to co-sign is one useful approach to do just that. It seems justifiable to have more stringent credit requirements for co-signers than for applicants, as co-signers may have to fulfill the resident's financial obligations in addition to their own. Note that any response other than approval, requires the provision of an "adverse action" report...as is necessary for denials.

Other options to consider are to require additional security deposit from people who don't have a verifiable rental history or perhaps establish an initial month-to-month term instead of a lease as part of the "conditional" approval process for less-than-fully-qualified applicants. In any case it seems inherently fair to "release" the requirement after a specified period of time. For example, once a tenant has rented from you for a year, you know their current rental behavior well and should be able to treat them as you would fully-qualified persons.

Remember that the maximum amount of security deposit allowed for an unfurnished unit is the equivalent of two times rent (in addition to the payment of the first month's rent). If you take more than that amount, California law<sup>1</sup> requires that there be at least a six month lease. Further, it can be more difficult to evict a resident for behavior problems when they have pre-paid rent in advance.

✓ **Sufficient income/resources.** If your gross monthly income, before taxes, is less than X times the monthly rent, we will require a qualified co-signer on your rental agreement (or an additional deposit of \$ amount). If your income is less than X-Y times the monthly rent, your application will be denied.

We must be able to verify independently the amount and stability of your income or resources. (For example: through pay stubs, employer/source contact, bank statements, welfare payments, or tax records. If self-employed: business license, tax records, bank records, or a list of client references.) For Section 8 Housing Choice Voucher applicants, the amount of assistance will be considered part of your monthly income for purposes of the calculation. [You might consider the opposite: that the tenant's "share" of the rent when there is a subsidy is the basis for the multiplier (i.e. rent is \$1,000/month). The subsidizer pays \$600. The resident must pay \$400, so they must show a source of income of X times \$400. Also, some landlords might not want to include this paragraph, as it could be construed as indicating that section 8 vouchers are accepted.]

Set reasonable, non-discriminatory eligibility standards. You may not discriminate based on source of income as long as the income is legal, verifiable, and paid directly to the applicant or applicant's representative. Apply the same standard to all applicants, whether married or single. If using a rent to gross income ratio, consider the combined household income of all persons who will reside in the unit.

Also, you can, and should, verify self-employment. Criminals may describe themselves as self-employed on the assumption that you will have to take their word as verification. Some will be unprepared to supply tax returns, a copy of a business license, or other verification.

It may also be appropriate to remove income requirements for Section 8 applicants since your local Public Housing Agency (PHA) will have already determined the amount of subsidy based on ability to pay. Note

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<sup>1</sup> California Civil Code section 1950.5

also that some landlords include a condition for those applicants who do not have a regular monthly income, but do have substantial savings on which to draw. Landlords who set such guidelines often define a minimum cash net worth (described as a multiple of the monthly rent) for people in this category.

✓ **Section 8 information access.** Section 8 Housing Choice Voucher applicants must sign a consent form allowing the local Public Housing Agency to verify information from your file regarding your rental history.

HUD guidelines permit Public Housing Agencies to allow the landlord to verify certain types of information in the applicant's Section 8 file. Check with your local PHA to find out how the guidelines are applied in your area.

✓ **False information is grounds for denial.** Your application may be denied rental if you misrepresent any information on the application. If misrepresentations are found after a rental agreement is signed, your rental agreement may be terminated.

If your applicants are not honest with you, you may have a basis to deny the application or maybe even evict based on the information provided. Seek advice to consider legal implications and practical issues on a case-by-case basis.

✓ **Criminal convictions.** Your application will be denied if, in the last X years, you have had a conviction for the manufacture or distribution of controlled substances.

This criterion is more controversial than it may seem, because people who have been convicted of a crime need a place to live. In some states people who have been convicted of a crime — and served their time — are granted limited protected class status. Also, don't use this requirement as a crutch — many drug dealers haven't yet been convicted of a crime. In addition, few people who are planning to use a rental for illegal activity, whether or not they have a criminal record, will have a verifiable, clean rental history. If you are performing the other recommended screening steps conscientiously, this criterion will often be unnecessary. Although federal fair housing laws exempt landlords from liability for denying an applicant with a conviction for sale or manufacture of controlled substances, California's Megan's law provides for up to a \$25,000 fine if a landlord uses registry information about a sex offender to deny housing. In between those extremes, there are risk management decisions to be made, as tenant advocates argue that denial based on criminal background has a disparate impact based on race, national origin and sex.

✓ **Court judgments may result in denial of your application.** If, in the last X years, you have been through a court ordered eviction, or had a judgment against you for financial delinquency, your application will be denied.

Although, in most cases, you may turn down applicants who have been through a recent court-ordered eviction, we recommend maintaining flexibility for some instances. After all, some evictions are not deserved. It also seems inherently more fair to give people who have made a single mistake the chance to improve.

✓ **Poor credit record may result in denial of your application.** Credit records showing occasional payments within    to    days past due will be acceptable, provided you can justify the circumstances. Records showing payments past    days are not acceptable. An current open bankruptcy or a bankruptcy closed within    years will result in denial.

If you are renting property, you are effectively making a loan of the use of your property to your tenant. Banks don't loan money to people with poor credit. You don't have to loan the use of your property either.

You may also want to have exceptions for specific types of bills. For example, you might wish to allow exceptions if the only unpaid bills are for medical expenses. However, regardless of what other exceptions you define, remember that it is a very poor idea to accept tenants who have a history of not paying previous landlords — if they didn't pay the last landlord, they may not pay you either.

✓ **Poor references from previous landlords may result in denial of your application.** Your application will be denied if previous landlords report significant levels of noncompliance activity including, but not limited to: repeated disturbance of the neighbors' peace; prostitution, use, sale or manufacture of illegal drugs; damage to the property beyond normal wear; violence or threats to landlords or neighbors; allowing persons not on the lease to reside on the premises; repeated late payment of rent or failure to give proper notice when vacating the property.

Landlords can protect themselves from discrimination claims and from allegations of subjective decision-making if they focus on facts provided by prior landlords, rather than opinion.

✓ **There is an \$X application screening fee.** If you are accepted and sign a rental agreement, the deposit will be applied to your security deposit. If you withdraw your application after we have incurred screening expenses, we will deduct our direct and out-of-pocket screening expense, and refund any remainder.

Actual screening expenses...out of pocket as well as those incurred through use of owner or employee time to check on the application can be charged to the applicant. Some landlords elect to charge holding deposits to ensure that if the application is approved, the landlord holds the unit off the market and the applicant fails to sign the rental agreement, the landlord can deduct losses from the deposit. This requirement may discourage some people involved in illegal activity from applying, because it communicates a higher commitment to screening by the landlord. However, because policies that allow for moneys collected with an application have been abused, it is important to make sure that the way you implement your policy is fair to your applicants and consistent with California law. *See the discussion on page 14 for more on this topic.* An alternative is to have the applicants sign the rental agreement as soon as the application is approved...with a starting date of the contract delayed to move-in.

✓ **We will accept the first qualified applicant.**

In the interests of ensuring that you meet the requirements of fair housing law, this is the best policy to set. Take applications in order, noting the date and time on each one. Start with the first application. If that applicant meets your requirements, go no further — offer the unit to the first applicant. This is the fairest policy you can set, and it helps make sure that you are not accused of using inappropriate reasons for discriminating when choosing between two different, qualified applicants.

## ***Rental Agreement***

Some landlords post a copy of the rental agreement next to their screening requirements. Others offer a copy to all who wish to review it. The key is to make sure that each applicant is aware of the importance you place on the rental agreement. In addition, you may want to set a procedure to ensure that every

applicant is aware of key elements of the agreements that limit a tenant's ability to allow others to move onto the property without the landlord's permission. One approach:

If you are accepted, you will be required to sign a rental agreement in which you will agree to abide by the rules of the rental unit or complex. A complete copy of our rental agreement is available for anyone who would like to review it.

Please read the rental agreement carefully, as we take each part of the agreement seriously. For example, along with many other requirements, the rental agreement:

- ✓ Allows only those people listed *on* the rental agreement to live at the property (you'll need our written permission to move someone else in);
- ✓ Does not permit subleasing without prior written permission;
- ✓ Does not allow disturbing the neighbors; and
- ✓ Forbids criminal or nuisance activity on the property.

The agreement has been written to help us prevent illegal activity from disturbing the peace of our rental units and make sure that our tenants are given the best housing we can provide.

[Complete prohibition of subleasing could cause problems if a resident cannot complete his lease, but proposes someone equally qualified, to take over his responsibilities]

### ***Other Forms and Procedures***

At this point, you may want to post information, as applicable, about waiting list policies, security deposits, prepaid rent, pet deposits, check in/check out forms, smoke detector compliance, and other issues relating to rental of the unit.

## **Regarding “Borderline” Applicants**

The preceding criteria include a number of examples where exceptions are made in borderline cases if the applicant can provide a co-signer. Alternately, some flexibility can also be introduced by setting rules that require borderline applicants to provide larger security deposits an initial month-to-month term or perhaps more prepaid rent. Introducing such flexibility to your application process can make sure, for example, that you do not turn down good applicants who have a single, justifiable problem on their credit report. Use of such borderline conditions can result in a more fair process for your applicants as well, reducing the risk that there could be an allegation of disparate impact based on age, national origin, etc. As with all aspects of managing rental housing, apply your policies for borderline applicants consistently regardless of the protected class of the applicant.

## **Application Information: What to Include**

The best approach is to avoid reinvention of the wheel — contact a local legal publishing company, a rental housing association, or your own attorney for copies of appropriate forms. Examples of sources for forms are provided in the *Appendix*. Whether you are using application forms or rental agreements, make sure you have forms that were designed specifically for the laws that govern your area and are up-to-date with any recent changes.

1. These requirements, and others, will be on many standard forms. You should collect this information for each adult<sup>1</sup> — *anyone* who is 18 years of age or older — or emancipated minors, who intends to reside in the unit:
  - Full name, including middle and any other designations such as junior, senior, etc.
  - Date of birth. (You’ll need it for the credit check).
  - Information regarding a valid, current, government-issued I.D.
  - Social security number, but consider using secondary screening methods if this number is not supplied.
  - Name, address, and phone number of past two landlords, but consider conditional approval if this information is not supplied.
  - Source of income and/or employment history for the past year. All income sources, assets if your criteria considers them, employment information such as salary, contact/supervisor’s name, phone number, address. If self-employed, ask for copy of business license, tax returns, bank records, or client references. Additional income — it is only necessary to list income that the applicant wants included for qualification.
  - Credit and loan references. Auto payments, department stores, credit cards, other loans.
  - Bank references. Bank name, account number, address, phone number.
  - AS APPROPRIATE: Name and phone number of an emergency contact; information about pets<sup>2</sup> and deposit rules; other information required for application.
2. The following question is not typically on standard forms, but could be added. If you are going to use it, make sure you include it on all application forms and not just some of them.
  - “In the last X years, have you, or any other person named on this application, been convicted for sale or manufacture of illegal drugs?” (You could also make a risk management decision about other types of crime that would constitute a threat to the health, safety, or welfare of other tenants or neighbors.

Of course, if they do have a conviction, they may lie about it. Some screening companies can do criminal background screening and if you discover they have lied, you may have appropriate grounds for denying the application or, with the right provision in your lease, terminating the tenancy. Also, it is one more warning to dishonest tenants that you are serious in your resolve.

## About Fees and “Application Deposits”

Most landlords charge an application screening fee to pay the cost of screening. Others require an earnest money holding deposit at the time of application to make sure the applicant reimburses the landlord for expenses incurred for failing to rent after approval of the application.

Charging a holding deposit, or an application screening fee,<sup>1</sup> is not for everyone. In addition, because landlords have occasionally abused holding deposit or screening fee collection, it is important to make sure that your approach is consistent with California law.

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<sup>1</sup> While recording such information as names and birthdates of all residents, including children, is appropriate on the rental agreement or lease, it is not appropriate information to ask about during the application process.

<sup>2</sup> Regarding pets: you may regulate or deny the ownership of pets who could harm property. So forbidding ownership of dogs, cats, pigs etc. is generally allowable. However, an “assistance animal” is not a “pet”: a blind person with a seeing-eye dog, for example, may not be denied rental housing on account of owning the dog, or be asked to pay “pet deposits” or meet other requirements targeted to pet owners.

- 1. Charge no more than is permitted by California law.** A law that went into effect in 1997 limits the amount of screening fee a landlord may charge to the *lesser* amount of a) an amount which is enough to cover the direct out-of-pocket costs of screening an applicant (e.g., the cost of a credit check or the amount you pay a screening company) or b) \$30 adjustable for inflation from January 1, 1998. In 2010, the maximum fee was \$41.72. The current year's fee is determined in February of the current year. The fee won't necessarily cover all costs you incur to screen applicants. The law also places other regulations on the practice of charging applicant screening fees. Landlords who intend to charge a screening fee should be familiar with these requirements prior to implementing a screening fee procedure.<sup>2</sup>

**Returning fees or deposits.** Screening fees actually incurred, may be retained by the landlord whether the resident qualified or not. The expenses are incurred for the process itself. If a holding deposit is taken, it should be returned if the application is denied. If the application is approved but the applicant fails to rent the unit when it is ready, the landlord may consider retaining the expenses which are incurred as a result of the applicant's failure to rent.

**For more information about fee and deposit policies — as well as guidance on appropriate forms to use** — contact a local property management association or an experienced landlord/tenant attorney. Some references are listed in the *Appendix*. For those who are running multi-family units, you may also wish to consult those same sources about a related issue — how to implement a fair waiting list policy for applicants who are willing to wait for an available unit. [The word “qualified” raises the issue of the screening fee law requiring that if a fee is charged for screening, an applicant must be informed if there is no unit available currently, or due to be available soon, so removing it makes the statement more applicable.]

## How to Verify Information

Many landlords are surprised to receive calls from other landlords inquiring about the quality of a past tenant. Apparently it doesn't happen often enough. As one landlord put it, “you can spend \$100 in time and money up front or be stuck with thousands later.” As another put it, “99% of these problems can be avoided through effective screening. There is no better investment you can make.” If you implement no other recommendations in this manual, implement these:

- 1. Compare the I.D. to the information given.** Make sure the photo I.D. matches the applicant and the information matches that given on the application form. If the picture, address, and numbers don't match the application information, find out why — you may have cause to turn down the application. Unless obvious inconsistencies can be explained and verified to your satisfaction, you don't have to rent to the applicant. Please consult a qualified attorney about reporting address discrepancies.
- 2. Have a credit report run and analyzed.** A credit report will provide independent verification of much of the application material. You can find out about past addresses, court ordered evictions, credit worthiness, past due bills, and other information. The reports are not foolproof, but they provide a good start. Here are your options:

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<sup>1</sup> Technically, if the money collected is a “deposit” it should ultimately be refunded or applied to the tenant's move-in costs (e.g., rent, security deposits, etc.); in the case of a “fee,” the amount can be kept by the landlord to cover screening expenses separate from the tenant's move-in costs.

<sup>2</sup> See California Civil Code Section 1950.6.

- **Join a credit bureau directly.** If you are managing a number of units and are likely to be screening multiple applicants every month, you may find it cost-effective to join a credit bureau directly and spend the time to learn how to interpret their reports. While this is an option, note that even some very large management companies go through associations or contract with applicant screening firms to gain the benefit of their outside expertise.

Or:

- **Have a third party pull the report and offer interpretation.** If you are not screening a sufficient volume of applicants, or would like assistance in interpreting the reports, contact an applicant screening firm or local rental housing association for assistance. Services vary from organization to organization and you should shop for the organization that best meets your needs. At one end of the spectrum are organizations that handle the entire applicant screening process for you. At the other end of the spectrum are organizations that simply pull the reports and mail you a copy. There are many variations in between.

**3. Independently identify previous landlords.** The most important calls you make are to the previous landlords. The best indicator of a tenant's future behavior is his or her past behavior. To begin, verify that the applicant has given you accurate information:

- **Verify the past address through the credit check.** If the addresses on the credit report and the application don't match, find out why. If they do match, you have verification that the tenant actually lived there.
- **Verify ownership of the property through the tax rolls.** A call to the county tax assessor of many counties in the United States will generally give you the name and address of the owner of the property that the applicant previously rented. Unfortunately, this information is not commonly available over-the-phone from most counties in California. You can get this public information in person from the county, or hire a screening company to collect it for you, or in some instances, get the information from a title company or real estate broker. If the name on the tax records matches the one provided by the applicant, you have the actual landlord.

If the name on the application doesn't match with tax rolls, it could still be legitimate — sometimes tax rolls are not up to date, property has changed hands, the owner is buying the property on a contract, or a management company has been hired to handle landlord responsibilities. But most of these possibilities can be verified. If nothing else, a landlord who is not listed as an owner on the tax rolls should be familiar with the name of person who is listed — so ask when you call.

- **If possible, cross check the ex-landlords' phone numbers out of the phone book or the Internet.** This will uncover the possibility of an applicant giving the right name, but a different phone number (e.g., of a friend who will pretend to be the ex-landlord and vouch for the applicant). If the owner's number is unlisted, you will have difficulty verifying the accuracy of the number provided on the application. The local phone company may be willing to give you the name of the person who uses the number on the application, although in most cases they won't.

Now you have verified the landlord's name, address, and perhaps even phone number. If the applicant gave you information that was intentionally false, deny the application. If the information matches, call the previous landlords.

Remember, if the applicant is currently renting somewhere else, the present landlord may have an interest in moving the tenant out and may be less inclined to speak honestly. In such an instance, your best ally is the landlord before that — the one who is no longer involved with the tenant. Be sure you locate and talk to a past landlord with no current interest in the applicant.

- 4. Have a prepared list of questions that you ask each previous landlord.** Applicant verification forms — generally available through rental housing associations or through legal publishing companies — give a good indication of the basic questions to ask. You may wish to add other questions that pertain to your screening criteria. Some relevant inquiries could include: “Were there any police responses involving this person?” “Were there any notices served and if so, when and for what?” “Were there any complaints about violations of the agreement such as for noise or other nuisance?”

Also, if you suspect the person is not the actual landlord, ask about various facts listed on the application that a landlord should know — the address or unit number previously rented, the zip code of the property, the amount of rent paid. If the person is unsure, discourage requests to call you back — offer to stay on the line while the information is looked up.

- 5. Get co-signers if necessary.** If the applicant meets one of your defined “borderline” criteria — such as having rented from a relative previously — and you have posted the appropriate rule, require that a co-signer apply with the applicant. Verify the credit and background of the co-signer and consider having higher credit and source of income standards that you would a rental applicant. To ensure the legal strength of the co-signing agreement, you may wish to have your attorney draw up a document you can use for such purposes.
- 6. Verify income sources.** Check on all sources of income listed to determine if they are legal and verifiable. If the applicant is employed, call employers and other contacts using phone numbers verified from local directory assistance. If an applicant is self-employed, get copies of bank statements, tax returns, business licenses, or a list of client references. Don’t cut corners here: many drug distributors wear pagers, have cellular phones, and generally appear quite successful, but they cannot verify their income with tax returns, bank statements, or references from established clients.
- 7. Consider checking for criminal convictions.** The process for obtaining criminal background information will vary by county, but you do have the right to obtain such information if you give the proper “investigative credit report” documentation authorizing information beyond a credit report. Outcomes of court proceedings are generally public record and as such can be obtained through the local court system. Typically, police or sheriff’s departments are not permitted to disclose information about another person’s criminal background. However, if your local police tell you they cannot release information, this doesn’t necessarily mean the information is unavailable. It may only mean that the information is not available through that channel. Here are the options available in California:<sup>1</sup>
  - **County-by-county court record search.** You may need to go directly to court records to obtain the information you need. Conviction information held in court records is typically public information. The type of information you will need to provide the court to attain the criminal record will vary (e.g., name, current address, date of birth, perhaps social security number). Your chances for getting verifiable information are best if you have as much information as possible.
  - **Private tenant screening firms.** Some private screening firms maintain their own databases, collected from county court records of criminal conviction information. The reliability of such information will depend on screening company’s approach for collecting the information.
  - **State-wide search through the Attorney General’s Office.** On the one hand, the opportunity to do a statewide search is an attractive one — the California Attorney General’s office can

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<sup>1</sup> The procedure for checking criminal background varies by state. Some states offer criminal conviction databases on-line — they can be accessed 24 hours a day and no permission from the applicant is required, while others are similar to California’s process, where rapid access to criminal conviction records is not available.

provide statewide conviction information for any name requested, however you must show proof that the applicant grants permission for the background check. It's the "proof of permission" requirement that makes the statewide criminal background check difficult: the Attorney General's Office requires submission of the applicant's fingerprints on an approved fingerprint card. While local law enforcement agencies can take the prints and provide them to you, this would obviously be a very unattractive process to many good applicants, not to mention time consuming for your application process.

- **Sex Offenders.** California law prohibits denying housing to a registered sex offender based on registration as a sex offender.<sup>1</sup> Every rental agreement or lease must state that pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the California Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov).

Another cautionary note: many attorneys advise that conviction — but not arrest — may be used as a basis for rejecting an applicant. Patterns of arrest have proved to be discriminatory against protected classes and, as such, would be inappropriate to use as a screening criterion.

Finally, resist the urge to rely too heavily on this screening technique — there are many criminals and problem tenants who have never been convicted of a crime.

- 8. Verify all other information according to your screening criteria.** Remember, before you call employers, banks, or other numbers listed on the application, verify the numbers through the Internet, your local phone book or long distance directory assistance.

## A Note About Hiring Employees

Many rental property owners hire employees to assist with tenant screening, routine maintenance, and other tasks. It is critical that resident managers and other "agents" of the landlord be screened even more thoroughly than applicants for tenancy. In general, when an employee breaks the law while on duty, both the employee *and* the employer can be held responsible by the party that is harmed by the action. When the employee violates an element of rental housing law, the liability you will hold for employee misbehavior should be reason enough for extra screening efforts.

One screening tool that you will want to seriously consider for job applicants is a criminal conviction check, even if you don't check criminal backgrounds on prospective renters. Once property managers *are* hired, make certain they are trained in effective applicant screening, along with the warning signs of dishonest applicants. Also, be sure they understand, and follow, the requirements of fair housing laws.

## How to Turn Down an Applicant

In general, if you have posted fair rental criteria and you screen *all* applicants against those criteria, you may safely reject an applicant who does not meet your guidelines. Opinions vary regarding the amount of information that is required to be given to an applicant who is denied a rental unit. (Note: If you are managing public housing or publicly subsidized units, your disclosure requirements may be greater than the ones described here.) We recommend, at the minimum, following the guidelines defined by the federal government in the Fair Credit Reporting Act for denial of credit. Check to see if your local jurisdiction requires additional disclosure.

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<sup>1</sup> Penal Code Section 290.46(1)(2)(G)

The following is intended as a general overview of how two different types of applicant rejections work. See the law itself for an exact description:<sup>1</sup>

- **If the rejection is based on information, in whole or in part, from non-paid sources** (the word of a previous landlord, for example): While you are not required to disclose immediately your reason for rejecting applicants in these situations, you *are* required to advise applicants of their right to submit, within 60 days, a written request for that information and their right to a response from you, within a reasonable period of time, disclosing the nature of the information upon which the adverse decision was made.

Sample wording: “Based on a check of information you provided in your application, you do not meet our posted rental criteria. If you have questions about this decision, you may submit a request in writing to (your name and address) within 60 days, and we will explain the basis for the decision within a reasonable period of time.”

Of course, if you receive such a request, then report the nature of the information upon which the adverse decision was based. Again, if your screening criteria are free of illegal discrimination and you have applied your criteria consistently, you may safely reject applicants who do not measure up.

*Note this small additional requirement if the rejection is based on information from a person who is your “affiliate”* (e.g. a co-worker or co-owner): The process is identical to that described above, except that the required response time is specifically stated: 30 days or less from the date the landlord receives the rejected applicant’s written request.

Of course, when possible, keep it simple. For example, if you are turning down an applicant simply because you accepted an earlier applicant, you or if one look at the application indicates that the person doesn’t have nearly enough income to rent the unit, you could decide not to make the applicant wait to find out the reason, but rather just put the reason on the adverse action statement.

- **If the rejection is based, in whole or in part, on information from a credit report, screening company, or other organization that you pay to provide screening information:** Because of the potential for abuse of, or misinformation in, credit reports, the Fair Credit Reporting Act requires that very specific information be provided to applicants who are rejected based on information obtained from a “consumer reporting agency.” While the information may be provided orally, it is a good idea to give written notification just to make sure you are in full compliance with the act. The following is only intended as a brief orientation. The screening company or other consumer reporting agency you work with should be able to answer your questions and provide you with additional information and simple, written forms to help ensure you are in full compliance with the act.

In situations where adverse decisions are based, in whole or in part, on information from a consumer credit report, a landlord is *required* to provide the rejected applicant all of the following information:

- Notice of the rejection. Sample wording: “Based on information we have received from your credit report (or other paid source) you do not meet our written rental criteria and we therefore deny your application for tenancy.”
- The name, address, and telephone number (including a toll-free number if the agency is one that keeps nationwide consumer files) of the consumer reporting agency that furnished the information.
- That the consumer reporting agency did not make the decision to reject the applicant and therefore it is likely that it will not be able to explain the reason for the adverse decision.

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<sup>1</sup> For more information, contact the Federal Trade Commission by phone at 202-326-3128 or by mail at 6th Street & Pennsylvania Ave., NW, Washington, DC 20580. A full copy of the text of the FCRA can be obtained over the Internet at <http://www.ftc.gov>.

- That the applicant has the right to contact the consumer reporting agency within 60 days to receive a free copy of its report.
- That the applicant has the right to dispute the accuracy or fairness of information in a consumer report furnished by the consumer reporting agency.

(Note: Many landlords have applicants obtain a copy of their consumer report directly from the credit reporting agency, rather than, for example, providing the applicant with a photocopy of the report the landlord received. Check with your credit reporting agency or with an experienced landlord-tenant attorney to determine your most appropriate policy on this issue.)

Again, in the interest of proving you have met disclosure requirements, you may want to hand out an information sheet with the disclosure process described and appropriate addresses provided. Contact a local property management association for more details, and again, check your local law for additional disclosure requirements.

## Other Screening Tips and Warning Signs

The following are additional tips to help you screen applicants. You should also be familiar with the warning signs described in the chapter on Warning Signs of Drug Activity.

- **Consider using an “application interview.”** Some landlords conduct a brief oral interview, often at the same time they accept the written application. Landlords who use this approach find it has these advantages: First, applicants don’t know which questions are coming, so it is harder to make up a story — something that shouldn’t bother an honest applicant but may uncover a dishonest one. Second, the landlord has the opportunity to watch responses and make mental note of answers that seem suspicious. For example, honest applicants usually know their current phone number or middle name without having to look it up.

The interview involves, at minimum, making sure the applicant can repeat basic information requested on the application form without reading it. For example, the landlord might ask the applicant to verify his or her full name, current phone number, current address, and other pieces of information that most honest applicants will be familiar with without having to look them up.

*An honest applicant usually knows his or her full name and date of birth without having to look it up.*

Your best approach will be to prepare a standard set of non-discriminatory questions that are then asked of every applicant in the same manner. Also, as with all policies you set, if you decide to conduct application interviews, you should include a commitment to making reasonable accommodations for those who cannot comply due to, for example, a handicap that causes a speech problem.

If you choose not to use an interview approach, at minimum observe the way the application is filled out. Applicants may not remember the address of the apartment they were in two years ago, but they should know where they live now, or just came from. Generally, honest applicants can remember their last address, the name of their current landlord, and other typically “top-of-mind” facts about their own lives.

- **Consider a policy requiring applications to be filled in on site.** Some property managers require all application forms to be filled in on the premises — an applicant may keep a copy of their form only after it has been filled in, signed, and a copy left with the landlord or manager. Applicants who are unsure of some information should fill in what they can, and come back to fill in the rest. Such a policy should not be a barrier to honest applicants — in most cases, they would have to return to bring back

the signed application anyway. However, the policy can dampen the ability of dishonest applicants to work up a story.

Assuming you have communicated your commitment to keeping illegal activity off your property, such a rule may also allow dishonest or dangerous applicants to exit with minimal confrontation — without an application in hand they are less likely to pursue making up a story and, once off the premises, they may simply choose not to return.

Again, if you use such a policy, make sure it includes making reasonable accommodation for people whose particular handicap, or other protected characteristic, would otherwise result in the policy being a barrier to application.

- **Watch for gross inconsistencies.** When an applicant arrives in a brand new, luxury sports car and fills out an application that indicates income of \$1,000 a month, something isn't right. There are no prohibitions against asking about the inconsistency or even choosing to deny the applicant because the style of living is grossly inconsistent with the stated income. You may also deny the applicant for other reasons that common sense would dictate are clearly suspicious (credit reports can also reveal such oddities — for example if the applicant is paying out much more per month to service credit card debts than the applicant is taking in as income, something isn't right). Many don't realize it, but unless such a decision would cause a disproportionate rejection of a protected class (e.g., race, color, religion, and others), the law allows room to make such judgment calls.

While you may not discriminate on the basis of protected class status or other factors that are unrelated to legitimate business concerns, you *may* discriminate on the basis of many other factors that *are* legitimate business concerns, provided the effect is not a disproportionate denial of a protected class. If you deny the applicant for such a reason, record your evidence and the reason for your decision. Be careful when making decisions in this area, but don't assume your hands are tied. The law is written to prevent discrimination against protected classes. You are not required to look the other way when gross inconsistencies are apparent.

*The law is written to prevent discrimination against protected classes. You are not required to look the other way when gross inconsistencies are apparent.*

- **Watch out for Friday afternoon applicants who say they must move in that very weekend.** Criminals know that you may not be able to check references until Monday, by which point they will already be in the rental unit. Tell the applicant to find a hotel or a friend to stay with until you can do a reference check. Could it cost you some rent in the short run? Yes. Could it save you money in the long run? Absolutely. Ask any landlord who has dealt with a drug problem in a rental unit. It is worth avoiding. (Some landlords allow weekend applicants to move in if they can independently verify their story. But you are better off waiting until you can verify the entire application.)
- **Observe the way applicants look at the unit.** Do they check out each room? Do they ask about other costs, such as heating, garbage service, and others? Do they mentally visualize where the furniture will go, which room the children will sleep in, or how they'll make best use of the kitchen layout? Or did they barely walk in the front door before asking to rent, showing a surprising lack of interest in the details? People who are planning an honest living care about their home and often show it in the way they look at the unit. Some who rent for illegal operations forget to pretend they have the same interest. Also, if the applicant shows little interest in any of the property except the electrical service, take note — both meth labs and marijuana grow operations can include rewiring efforts.
- **Be aware that people involved in illegal activity may use “fronts” to gain access to your property.** You may rent to someone who has an acceptable rental history and no record of illegal activity, yet once that person moves in, boyfriends, girlfriends, or other acquaintances move in and begin dealing

drugs and generating other crime or nuisances. In some cases, the people you thought you rented to don't move in at all — after using their good references to rent the unit, they give the key to drug dealers, for a fee. Across the nation, it is the permission given by tenants to guests and others who have not signed the rental agreement that causes the greatest degradation in the quality of life in rental housing communities — both public and private.

Warning applicants that they will be held accountable for their guests, and then enforcing such a requirement with your tenants, is a cornerstone of protecting your property and the surrounding neighborhood. Make sure your tenants know that they must control their guests, and if they cannot, they should ask for help quickly. Further, most rental agreements specify that only people named on the agreement are allowed to use the unit as their residence. Make sure such a stipulation is in your rental agreement and point it out to all applicants, emphasizing that having another person move in requires submitting that person's application and allowing you to check references before permission is granted.

*Across the nation, it is the permission given by tenants to guests and illegal subtenants that results in the greatest harm to the livability of rental housing communities — both public and private.*

If you make it clear you are enforcing these rules only to prevent illegal activity, you may scare away potential drug dealers, but keep good renters feeling more protected. You may further calm concerns of good renters if you assure them that you will not raise the rent because an additional person moves in. For more about this issue, see the chapter on Rental Agreements, beginning on page 23.

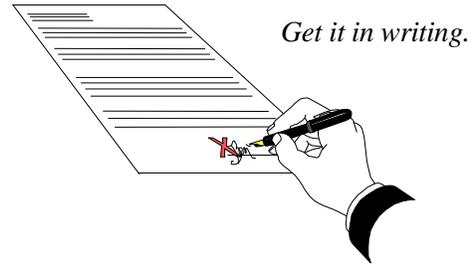
➤ **Consider alternate advertising methods for your property.**

Keep in mind that fair housing guidelines apply in all aspects of managing rental housing, including advertising selection. Advertising should be done in a variety of media and designed to appeal to the most diverse group of persons possible. For example, it would be inappropriate to advertise exclusively through a church newsletter or only in a foreign language newspaper. Such approaches could set up patterns of inappropriate discrimination. Either expand your media selection or change it altogether to make sure you are reaching a fair cross-section of the public.

➤ **Consider driving by the tenant's current residence.** Some property managers consider this step a required part of every application they verify. A visual inspection of applicants' current residences may tell you a lot about what kind of tenants they will be. Be sure you are familiar with drug warning signs before you look at a previous residences.

➤ **Announce your approach in your advertising.** Some landlords have found it useful to add a line in their advertisements announcing that they do careful tenant screening or that they run credit checks. The result can be fewer dishonest applicants choosing to apply in the first place. Select your wording with care — don't use phrasing that in your community might be interpreted as "code" for telling a protected class that they need not apply. Again, it is important to make sure that the opportunity to apply for your units — and to rent them if qualified — is open to all people regardless of protected class status, or other factors that are unrelated to legitimate business concerns.

## RENTAL AGREEMENTS



### ADVICE WE WERE GIVEN:

“We’ve solved a lot of problems by using the right paperwork at the beginning of the rental term — it improves our legal position and it lets the tenant know we are serious from the start.”

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## The Basics

Minimize misunderstandings between you and your tenant, thus building a basis for clean and fair problem resolution down the road. Any ambiguities are “construed against the maker,” meaning that if the landlord’s contract cannot be clearly understood the tenant will get the benefit of the doubt.

## Use a Current Rental Agreement

Many property managers continue to use the same rental agreements they started with years ago. Federal and state law can change yearly, and case law is in constant evolution. By using an outdated rental agreement, a landlord may be giving up important rights. If a problem tenant chooses to fight in court, an outdated rental agreement could cost the landlord the case.

Examples of resources that offer rental agreements and other rental forms based on California law are listed in the *Appendix*. In many areas property management associations provide rental forms and consider it their job to make sure they are consistent with current law. Local legal document publishing companies may also be good sources for effective rental agreements. Be sure, however, that you are buying a form that is developed for the laws of California — “generic” rental agreements, sold nationwide, are a poor substitute for a rental agreement tailored to state and local law.

Unless you are planning to work with your own attorney to develop a rental agreement, purchase updated forms from one of these sources.

## Month-to-Month or Long-Term Lease?

In many parts of the country, year-long leases are standard, while in many California communities it is more common to rent on a month-to-month basis. A month-to-month rental agreement gives the landlord the additional option of serving an eviction notice without having to specify a cause. If you want the maximum ability to remove tenants involved in illegal activity, this is the type of rental agreement to use.

(The exceptions are found in most jurisdictions that have rent control laws, in public housing communities, and with individual tenants on rent assistance — “Section 8.” In each of these situations, “just” or “good” cause is typically required for eviction.)

However, while the maximum power to evict is gained by using a month-to-month rental agreement whenever it is legal to do so, such an arrangement may not be the best in every situation. Market factors, as well as the expectations of local landlords and tenants, will also play a role in determining the best approach.

Also, there are benefits to leases that both parties can enjoy. Good tenants may appreciate the stability of a longer term commitment, and you may benefit if you have tenants who respect the lease term as a binding agreement. It is true that you give up your right to serve a *no*-cause eviction notice during the period of the lease. However, you may serve one of the *for*-cause notices defined in California law if tenants are in violation of the law or the lease. The decision about which type of rental agreement to use is up to the individual landlord — either approach can work.

Also, remember that while the terms of your rental agreement are important, even the best rental agreement is not as valuable as effective applicant screening. The most important part of any rental agreement is the character of the people who sign it. No amount of legal documentation can replace the value of finding good tenants.

## Elements to Emphasize

Inspect the rental agreement you use to see if it has language addressing the following provisions. If they are not in the rental agreement, consider adding them. To gain the most prevention value, you will need to point out the provisions to your tenant and communicate that you take your rental agreement seriously. Note that this list is not at all comprehensive — it only represents elements that are occasionally overlooked, and are particularly important for preventing and/or terminating drug-related tenancies.

- 1. Subleasing is not permitted.** Make it clear that the tenant cannot assign or transfer the rental agreement and may not sublet the dwelling. However, there can be a challenge of a tenant needs to breach the lease and provides an equally qualified applicant. Therefore, you could add this exception: “unless the sublease candidate submits to the landlord a complete application and passes all screening criteria.” That way, you can get someone else to take over the lease and still maintain control over your property — too often the people who run the drug operation are not the people who rented the unit. This provision will not stop all efforts to sublease, but it may prevent some and it will put you in a stronger position if you have to deal with a problem subtenant.
- 2. Only those people listed on the rental agreement are permitted to occupy the premises.** If the tenant wants another adult to move in, that person must submit a completed application and pass the screening criteria for rental history. To enforce this, you will need to define the difference between a “guest” and a “resident.” Since tenants are typically well within their rights to have guests stay with them for short periods of time, it is inappropriate for landlords to set rules that attempt to prevent the occasional overnight guest. However, it is appropriate for landlords to place limits on the ability of the tenant to have other adults establish their residence at the rental without permission. Two examples of generally accepted guest definitions used by California landlords are “14 days in a calendar year” and “10 days in a six month period.”<sup>1</sup>

Check with a local property management association or your own legal advisor before setting this criterion. Assuring your tenant that you will take this clause seriously may curb illegal behavior by

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<sup>1</sup> 10 day rule suggested by David Brown, *The Landlord’s Law Book, Vol. 1: Rights & Responsibilities*, Nolo Press, Berkeley.

others. Having the stipulation spelled out in the rental agreement will put you in a better legal position should that become necessary.

- 3. No drug activity.** Make it clear that the tenant must not allow the distribution, sale, manufacture, or usage of controlled substances on the premises. You could also add various other types of crimes — such as prostitution, assault, or other criminal behavior on the premises. It's already illegal, but spelling it out in the rental agreement can make it easier to serve eviction notices for the problem. For more on this issue, see the discussion of a "Crime Free Lease Addendum" below.
- 4. The tenants are responsible for the behavior of themselves, their household members, and their guests.** Tenants should understand that they will be held responsible for the conduct of themselves, their children, and all others on the premises under their control. Generally speaking, the law is designed to allow the tenant the same "my home is my castle" right to privacy as that enjoyed by any owner-occupant. However, with the right to private enjoyment of the "castle" comes the responsibility to control what goes on there. Spelling it out in the rental agreement will help tenants understand the scope of their responsibility.

For people who plan to "front" for illegal activity, this underscores the point that they will be given as little room as possible to protect themselves by claiming that acquaintances, and not themselves, were involved in the activity. In general, if the first time you hear about drug activity in a unit, it is from the distraught tenant looking for help in controlling guests or children, by all means respect the request and help if you can. But if you don't hear about a problem until there is a cascade of complaints from multiple neighbors or the police serve a search warrant, the time for compassion toward the tenant is probably passed. Recognize that the tenant has violated the rental agreement and serve the appropriate notice.

- 5. The tenant will not unduly disturb the neighbors or staff.** Make it clear that the tenant will be responsible for making sure that all persons on the premises conduct themselves in a manner that will not interfere with the neighbors' peace or the work duties of staff members. The issue here is not the occasional loud party. The issue is prevention of chronic nuisance behavior that can severely impact a neighborhood if the behavior is left unchecked.

What does disturbing others have to do with crimes? It doesn't necessarily. But illegal behavior may also cause other disturbances. We know that managers who attend to their own obligations and require tenants to meet theirs are far more effective in preventing criminal activity than those who look the other way as complaints of noncompliance roll in. It is almost never the case that a drug criminal's first observed, serious offense is the dealing or manufacturing of narcotics.

## "Crime Free" Lease Addendum

Many rental owners attach an addendum to their lease spelling out specific crimes under California and local law that will be considered violations of the lease. Many versions of a "crime-free" or "drug-free" addendum are available, with one example often distributed at the trainings associated with this manual. Before using such an addendum, have your attorney review it.

While the behaviors proscribed in such agreements are already against the law, spelling them out as prohibited in the lease may allow you additional legal choices should you have to evict tenants for allowing or conducting criminal behavior. Even more important, announcing your commitment to maintaining safe housing through the use of a "crime-free" lease addendum can be a valuable tool to discourage those planning criminal activity from moving in.

## **Pre-Move-in Property Condition Inspection**

Prior to signing the rental agreement, walk through the property with the tenant and make a visual inspection together. Some landlords use check in/check out forms developed for the purpose, others take photographs which are then signed by both parties, and still others make a pre-move-in video tape with the tenant or a combination of these approaches. Regardless of the approach, agree on what repairs need to be done. Write down the agreement and have both parties sign it. Make any agreed-upon repairs and document that those have been completed as well. Give copies to your tenant and keep signed and dated copies in your files.

Now, should your tenants damage the property, you have a way to show it happened after they took possession of the unit. (Note: This also protects tenants — the pre-move-in inspection can prevent a bad landlord from trying to hold a tenant responsible for problems that pre-dated the tenancy.)

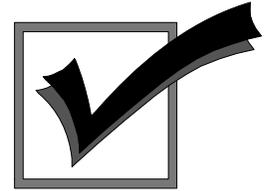
The pre-move-in inspection can reduce the likelihood of some tenants causing damage to the premises. It can also protect you against the rare case of a tenant who may attempt to block a legitimate eviction attempt by damaging the premises and then claiming that the damage was preexisting.

## **Key Pick-up**

As a final prevention step, some landlords require that only a person listed on the written rental agreement may pick up the keys. This is one more step in ensuring that you are giving possession of the property to the people on the agreement and not to someone else.

## ONGOING MANAGEMENT

*What to do to keep the relationship working.*



### COMPLAINTS WE HAVE HEARD:

“The tenant moved out and someone else moved in without us knowing it. Now we have drug dealers on the property and the courts insist they are legal tenants, even though they never signed a lease.”

### ADVICE WE WERE GIVEN:

“You need to follow one basic rule — you have to *actively* manage your property. The only landlords who go to court are the ones who don’t actively manage their property.”

“For most property managers the experience is one of putting out brush fires all day long. If property managers can take a more proactive approach to the process, they can build an ever improving set of renters, avoid a lot of legal hassles, and have fewer brushfires during the day.”

“If your training teaches landlords nothing else, teach them that the neighbors in an area are not their enemies.”

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## The Basics

Maintain the integrity of a good tenant/landlord relationship. Strengthen communications between the landlord, tenants, and neighbors. Help build a sense of community.

## Don’t Bend Your Rules

A key to ongoing management of your property is demonstrating your commitment to your rental agreement and to landlord/tenant law compliance. Once you set your rules, enforce them. Make sure you meet your responsibilities, and make sure you hold your tenants accountable for meeting theirs. By the time most crime problems are positively identified, there is a long history of evictable behavior that the landlord ignored.

- **When aware of a serious breach, take action before accepting the next rent payment.** If a landlord accepts rent while knowing that the tenant is breaking a rule, but the landlord has not acted to correct the behavior, the landlord could lose the right to serve notices for the behavior. California law will generally consider acceptance of rent equal to acceptance of lease violating behaviors when the

landlord is aware of the problem behavior yet has not objected to it.<sup>1</sup> Further, it doesn't pay to teach your tenants that they are allowed to break the rules. So, at minimum, as soon as you discover violations of local landlord/tenant laws or of your rental agreement, give tenants written notice to correct the problem. *Then* accept the rent.

- **If someone other than the tenant tries to pay the rent, get an explanation.** Also, note on the receipt that the payment is for your original tenants only. Otherwise, by depositing the money, you may be accepting new tenants or new rental agreement terms, in this case potentially waiving your right to enforce rental agreement terms that regulate subletting.
- **If a person not on the lease may be living in the rental, pursue the issue immediately.** If you take no action to correct the behavior, and you accept rent knowing the tenant has allowed others to move in, you may have accepted the others as tenants as well. So either require the illegal subtenants to fill in a rental application and apply, or serve the appropriate notice that would require your original tenant to remove the subtenants under threat of eviction if the action is not taken — in most cases this would be a 3-day perform or quit notice.
- **Fix habitability and code violations at the property quickly.** Maintaining habitable housing for tenants is the most important of a landlord's responsibilities. In addition, as discussed earlier, failure to maintain a unit could compromise a landlord's eviction rights. Tenants may be able to use a "retaliation" defense when a landlord attempts to evict after a tenant has complained that the rental is substandard.
- **When a tenant doesn't pay rent, address the problem.** Some landlords have let problem tenants stay in a unit, not just weeks after the rent was overdue, but months. While flexibility is important in making any relationship work, be careful about being *too* flexible. There is a big difference between being willing to receive rent late during a single month and letting your renters stay endlessly without paying. In California, a landlord has the right to serve a 3-day "pay or quit" notice when the rent is past due.
- **If neighbors call to complain of problems, pursue the issue.** Although it does happen, few neighbors call landlords about minor problems. If you get a call from a neighbor, find out more about the problem, and take appropriate action. If there are misunderstandings, clear them up. If there are serious problems with your tenants, correct them. The chapter on Crisis Resolution (page 55) gives additional information about steps to take if a neighbor calls to complain.

Bottom line: If you respect the integrity of your own rules, the tenant will too. If you let things slide, the situation can muddy fast. It may mean more work up front, but once the tenant is used to your management style, you will be less likely to be caught by surprises.

## Responsibilities Defined

For a legal description of the responsibilities of landlords and tenants, review California Civil Code, your local maintenance code and your rental agreement language. (That last one is particularly important: if you haven't read your rental agreements recently, do it today!) Rental agreements typically spell out various responsibilities of both the landlord and the tenant. The following is an overview of the responsibilities of both parties.

### LANDLORDS

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<sup>1</sup> The legal concept is known as "waiver" — by taking the rent without taking action, the landlord potentially "waives" the right to evict for various known problems.

A landlord's responsibilities fall into three general areas: the condition of the premises as delivered to the tenant, the obligation to maintain the unit once it is occupied, and the obligation to respect the rights of the tenant. A landlord's responsibilities include:

- **Prior to move-in, provide the tenant with a clean, sanitary, and safe rental unit.** In California Civil Code 1941.1 and 1941.3, the conditions which make a dwelling unfit for tenancy are spelled out. Briefly, your units must meet the following minimum standards:
  - Weather-proof windows, walls, doors, and roof.
  - Plumbing, gas, and electric systems in good working order and in conformity with applicable building code at the time of installation.
  - Hot and cold running water furnished to appropriate fixtures and connected to a sewage disposal system approved by law.
  - Heating system in good working order and in conformity with applicable law.
  - Buildings and grounds clean, sanitary, and free from accumulations of debris, garbage, rodents and vermin.
  - An adequate number of garbage receptacles in good repair.
  - Safe floors, stairs, and railings.
  - Operable dead bolt locks that meet certain minimum standards on each main swinging entry door to a dwelling unit and security locks on most types of windows that are designed to open.<sup>1</sup>
  
- **After move-in, make sure the unit remains “tenantable.”** Landlords are responsible for repairing damage and dilapidation subsequent to tenants moving in. If deterioration or damage are caused by the tenant's lack of exercising “ordinary care” the tenant must repair it. However, landlords are granted both the power and the responsibility to make sure that tenants are doing their part to maintain the unit. For example, while the law and the rental agreement may both require that the tenant dispose of garbage in a sanitary manner, if the tenant is not doing so, it is up to the landlord to require the tenant to correct the problem — serving a three-day cure or quit notice that would require the tenant to remove the garbage or vacate the premises.
  
- **Respect the tenant's right to private enjoyment of the premises.** It has been a characteristic of landlord/tenant relationships for hundreds of years that once the tenant begins renting property, the tenant has the right to be left alone. Basically, the landlord must respect the tenant's right to private enjoyment of the unit in much the same way that an owner-occupant's right to privacy must be respected. In California, a landlord may only enter an occupied dwelling for emergencies, to make necessary or agreed-upon repairs, to supply necessary or agreed-upon services, to show the unit to potential buyers or contractors. (For the exceptions and more discussion see Property Visits on page 31.) Even when the landlord meets these conditions for entry, the entry must be made during normal business hours and only after providing the required amount of advance notice.
  
- **Avoid retaliation against a tenant.** A landlord may not retaliate against a tenant who is legitimately attempting to cause the landlord to meet his/her responsibilities under the California Civil Code. For example, a landlord may not increase rent, decrease service, attempt to evict, or take other retaliatory action in response to a tenant asking a landlord to repair a worn out furnace, fix a rotting step, or requests to take other actions that are the landlord's responsibility under the law.

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<sup>1</sup> See California Civil Code 1941.3 for the specifics of the locking requirements.

- **Avoid illegal discrimination.** Across the nation, landlords may not discriminate on the basis of a tenant’s (or applicant’s) race, color, religion, sex, handicap, national origin, or familial status. California law<sup>1</sup> specifically adds ancestry, age, marital status, source of income, sexual orientation, gender, gender ID, gender expression and waterbed ownership. Further, California’s Unruh Civil Rights act has been interpreted by courts to include any “arbitrary” discrimination, which essentially means that actions by a landlord that result in some applicants or tenants being treated differently from others must be based on legitimate business reasons. For more information about the application of civil rights laws, see the chapter on Applicant Screening.
- **Enforce the terms of the rental agreement and landlord/tenant law.** While both the rental agreement and the law will identify various required behaviors of tenants, in general it is up to the landlord to make sure the tenant complies. If the tenant is not in compliance, the law gives landlords the power to serve various types of “perform or quit” or just “quit” notices to either correct the behavior or require the tenant to move out. Essentially, unless the landlord takes action to correct the problem, there are few other mechanisms to correct difficulties associated with problem tenants. Even if the problems are criminal and the tenant is jailed, you may still have to serve a notice to regain possession. See the chapter on The Role of The Police, page 61, for more information.

## TENANTS

A tenant’s responsibilities are to assure that no harm is done to the unit and to pay the rent. In essence under California law, a tenant agrees to use ordinary care to preserve the safety and condition of rented property. Damages caused by the tenant’s lack of ordinary care should be repaired by the tenant. A tenant’s responsibilities include<sup>2</sup>:

- **Do basic housekeeping, comply with the rental agreement, and avoid harming the unit.** In addition to complying with rental agreement provisions, tenants are obligated to:
  - Keep the part of the premises they occupy clean and sanitary.
  - Dispose of garbage and waste in a clean and sanitary manner.
  - Operate properly all electrical, gas, and plumbing fixtures, and to keep them clean.
  - Use portions of the premises for the occupancy purposes they were designed for: kitchens for cooking, bedrooms for sleeping, and the like.
  - Not permit any person to willfully destroy, deface, damage, or remove any part of the dwelling or its equipment.
- **Pay rent.** Landlords have the right to receive rent for the use of their property and tenants have an obligation to pay it. The only exception is that tenants may reduce rent by the cost of repairs the landlord failed to make in a reasonable time. In general, if a landlord fails to repair a problem within 30 days of the tenant’s oral or written notice (fewer than 30 days if the repair need is “immediate”),<sup>3</sup> the tenant may repair it directly and deduct the cost, up to one month’s rent, up to twice in a twelve month period, without fear of retaliation. However, we recommend that tenants who are planning to take such action seek legal advice before doing so.
- **Enforce the terms of the rental agreement and landlord/tenant law.** Just as it is up to landlords to make sure that tenants comply with the rental agreement and landlord/tenant law, tenants hold the

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<sup>1</sup> See page 6 of this manual.

<sup>2</sup> See California Civil Code 1941.2.

<sup>3</sup> See section 1942 of Civil Code

primary responsibility for making sure their landlords comply. Tenants have powers to abate rent, give the landlord notice of maintenance problems, and/or take other action to cause a landlord to comply. Sometimes, specific agencies can assist in enforcing the law — problems associated with building code violations can be brought to the attention of a city’s housing inspectors, for example. Other agencies are available to help tenants with civil rights complaints. Because these kinds of agencies do not get involved unless the tenant notifies them, chief among the powers granted to a tenant is protection from the landlord’s retaliation, should the tenant attempt to assert a right defined in the law.

## Property Visits

A cornerstone of active management is taking care of the property. Unless you take steps to ensure the property is well-maintained, you can’t be sure you are meeting your responsibility to provide safe and habitable housing. In addition, maintaining habitable property protects your rights as well. If a bad tenant can also claim that you are not meeting your responsibilities, you may have difficulty succeeding with an eviction. Conversely, if it is clear you make every effort to meet your responsibilities (and you document it), a tenant will be less inclined to fight an honest eviction effort.

Summarized briefly, California Civil Code 1954 says that a landlord may enter a dwelling unit only in the following cases:

- In case of emergency.
- To exhibit the dwelling to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.
- To make necessary or agreed repairs, decorations, alterations or improvements.
- To supply necessary or agreed services.
- When a tenant has abandoned or surrendered the premises.
- Pursuant to a court order.

Entry by a landlord must be during normal business hours and after reasonable notice. Twenty-four hours written notice is typically presumed to be “reasonable,” if it is delivered to the property. If the notice is sent only via mail, a landlord should allow at least six days from the date of mailing. While written notice is now required, there is a special exception that allows verbal notice (also of at least 24 hours) when specific conditions are met associated with showing the dwelling to prospective or actual purchasers. (See the *Appendix* for references to the law itself.) Note that some landlords define “necessary or agreed” services and repairs further in their rental agreements.

While the purpose of a visit is to care for the unit and ensure its habitability, regular maintenance services will also deter some types of illegal activity. For example, if tenants know that the landlord actively manages the property, they aren’t likely to start making illegal modifications to the rental in order to set up a marijuana grow operation. Further, visits can help catch problems associated with illegal activity before they get out of hand. For example, it is common for drug dealers to cause damage to a rental unit that is way beyond “normal wear and tear” — a problem that could be observed, documented, and addressed through the process of a regular maintenance program. Though early discovery of such damage is a possibility, the more frequent impact of a maintenance program on illegal activity is basic prevention. Illegal activity is less likely to happen at property where the landlord has a reputation for concerned, active management.

The key to successful property visits is avoiding the adversarial position sometimes associated with landlord/tenant situations. A maintenance program done properly should be welcomed by your honest tenants. Steps include:

- **Set a schedule and follow it.** At minimum, every six months. It is a rare home that doesn't need at least some maintenance or repair work at least twice a year.
- **Give notice well in advance.** If the repairs or services are routine, keep the approach friendly. Perhaps call the tenant in advance and then follow up by providing the required written notice as well — remember it is okay to give more time than the law requires, but not less. To help address all maintenance needs efficiently, ask tenants to make note of any concerns they have in advance. Again, when done appropriately, good tenants should appreciate your attention and concern for maintaining the unit.
- **Find and address code and habitability problems.** When you visit the property, check for maintenance problems and handle any routine maintenance, such as replacing furnace or air conditioning filters or putting fresh batteries in a smoke detector. Discuss with the tenants any concerns they have. Make agreements to remedy problems. Then repair what needs to be fixed.

## Utilities

There are some instances when the shutting down of utilities is a symptom of drug activity — as dealers or heavy users get more involved in their drugs, paying bills can become less important.

Remember: If your lease stipulates that the tenant is responsible for utility bills, and the tenant stops paying for those services, you have grounds for serving a for-cause eviction notice (typically a 3-day notice to “perform or quit”) requiring that tenants get back into compliance with the lease terms or vacate the premises. This may be particularly important to do if shutting off the utility would result in the unit no longer meeting habitability standards.

## Keep a Paper Trail

Verbal agreements carry little weight in court. The type of tenant who is involved in illegal activity and would choose to fight you in court will know that. So keep a record of your agreements and provide copies to the tenant. Just having tenants know that you keep records may be enough to motivate them to stay out of court. You will need to retain documentation that shows your good-faith efforts to keep the property habitable and shows any changing agreements with a tenant — dated and signed by both parties.

## Trade Phone Numbers with Neighbors

Landlords of single-family residential housing sometimes don't hear of dangerous or damaging activity on their property until neighbors have written to the mayor, or the police have served a search warrant. Quite often the situation could have been prevented if the landlord and area neighbors had established a better communications link.

Find neighbors who seem responsible, concerned, and reliable. Trade phone numbers and ask them to advise you of serious concerns. You'll know you have found the right neighbors when you find people

who seem relieved to meet you and happy to discover you are willing to work on problems. Conversely, if neighbors seek you out, work with them and solicit their help in the same way.

Note that landlords and neighbors tend to assume their relationship will be adversarial. Disarm any such assumptions and get on with cooperating. If you both want the neighborhood to remain healthy and thriving, you are on the same side and have nothing to gain by fighting each other.

# APARTMENT WATCH/ PROMOTING COMMUNITY

*How to turn an apartment complex into a community*



## COMPLAINTS WE HAVE HEARD:

“We already have an ‘apartment watch.’ The tenants get together and watch the manager to see if I screw up!”

## ADVICE WE WERE GIVEN:

*“Please teach landlords that their good tenants can help.”*

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## The Basics

Good landlords and good tenants must learn to work together for the common goal of a safe community.

## Benefits

In multi-family units, unless your tenants report suspicious behavior, you may not find out about drug activity until the problem becomes extreme. Some people — tenants and homeowners alike — are frightened to report illegal activity until they discover the “strength in numbers” of joining a community watch organization. Whether you call your efforts “apartment watch,” “community pride,” or “resident retention programs,” the goal is the same: transforming an apartment complex into a community.

*Organizing efforts can lead to profound changes as the manager and the residents get to know each other and a sense of community starts to develop.*

Organizing a community is more than just encouraging tenants to act as “eyes and ears.” In the absence of a sense of community, the isolation that residents feel can lead to apathy, withdrawal, anger — even hostility — toward the community around them. Organizing efforts can lead to profound changes: as apartment residents get to know each other and the manager, a sense of community — of belonging — develops, and neighbors and tenants are more willing to do what it takes to keep a neighborhood healthy.

Complexes that enjoy a sense of community often have more stable tenancies and lower crime problems than comparable complexes that are not organized. Managers who have initiated such efforts note these benefits:

- ✓ Lower turnover, leading to considerable savings.
- ✓ Less damage to property and lower repair bills.
- ✓ Reduced crime.
- ✓ A safer, more relaxed atmosphere for the tenants.

- ✓ A positive reputation for the complex, leading to higher quality applicants and, over time, increased property values.

## Key Elements

The key to effective cooperative community building is to have the property manager take the lead and make sure the efforts are ongoing. Community organizing that is run entirely by tenants may have less long-term stability, simply because it is the nature of rental housing that tenant turnover will occur and key organizers will move on. For this reason, having the manager keep the program going is an important part of a successful program. Further, if management waits until the tenants are so fed up that they organize themselves, the relationship may be soured from the start. If management takes a proactive role in helping tenants pull together for mutual benefit, the opportunity for a positive working relationship is great. Tips include:

*When management takes a proactive role in helping tenants pull together for mutual benefit, there is a tremendous opportunity to build a positive working relationship.*

- 1. Clean house.** If you have tenants who are involved in drug activity, illegal gang activity, or other dangerous criminal behavior, resolve the issue before inviting tenants to a building-wide meeting. Your good tenants may be frightened to attend a meeting where they know bad tenants might show up. In addition, they may question your motivation if you appear to encourage them to meet with people involved in illegal activity. So before you organize, you will need to evict problem tenants and make sure that improved applicant screening procedures are in place. Until then, rely on informal communications with good tenants to help identify and address concerns.
- 2. Make community activities a management priority.** Budget for the expenses and consider promotion of such activity a criterion for management evaluation. It is not an afterthought. It is not something that resident managers should “get around to” if there is time. Unless managers make community organizing a priority, it will not get done.
- 3. Hold meetings/events quarterly.** Don’t expect major results from the first meeting, but do expect to see significant differences by the time the third or fourth is held.
- 4. Meet in the common areas if possible.** While small meetings can be held in the manager’s office, a vacant unit, or — should a tenant volunteer — in a tenant’s apartment, more people will feel comfortable participating if they can meet on “neutral” territory. Also, if you can hold events in courtyards or other outdoor locations, you may have more room to structure special events for children in the same area.
- 5. At each event, encourage people to meet each other.** Regardless of other specific plans for meetings, take basic steps that encourage people to meet each other. Simple steps done faithfully can make a big difference over time. At each event:
  - **Use name tags.** This simple step is important in helping to break down the walls of unfamiliarity for newcomers.
  - **Begin any formal meeting by having people introduce themselves by name.**
  - **Allow time at each event for people to socialize.** Make sure that some of this time happens after the meeting agenda is underway. Once the event is underway, participants will have the shared experience of the meeting with which to start a conversation.

- **Offer refreshments.** Whether it is just coffee and pastries or a potluck or a summer barbecue, free food can attract many to a meeting who might not otherwise have attended.
  - **Include activities for children and teenagers, as well as for adults.** Getting children involved in games and other events will provide a positive experience for children and help encourage parents to meet each other. Also, like adults, when children and teenagers get to know their resident manager, they are more likely to share information. This is important because teenagers, in particular, may have information about community problems of which adults are unaware.
6. **Hold “theme” events and special meetings as appropriate.** There is a balance between holding a purely social event and a meeting for the purpose of addressing an agenda. The balance at each meeting can vary, but it is important to provide some of both. At least one of the meetings held each year should be primarily for the purpose of celebration — a holiday party in the winter or a “know your neighbor” barbecue in the summer. Others can offer a time for socializing and a time for covering an agenda. Meeting agendas can be as varied as the types of apartments and people who populate them. In general meetings should:
- **Respond to issues that are a direct concern to a number of tenants.** If there are immediate concerns, such issues should take priority over other potential agenda items. If tenants are concerned about gang violence in the neighborhood, less pressing topics may seem irrelevant.
  - **Provide new information about the local community.** This could take any number of forms. You might invite merchants from the area, fire fighters, police officers, members of neighborhood associations or other community groups, social workers, employment counselors, or any number of other people who could share useful information with tenants.

Also, remember the importance of keeping meeting agendas on track, interesting, and focused on tangible, measurable outcomes. If tenants feel that meetings rarely address the published agenda, interest will shrink quickly.

7. **Nurture a sense of shared responsibility.** While it is important for management to continue providing support for the community-building process, it should not be a one-way street. Leadership in the complex should be nurtured, and volunteers recruited at each meeting to assist with the next meeting, program, or event. The more residents experience the community-building process as a joint effort of management and residents, the more they will appreciate it. Promoting a sense of shared responsibility can be accomplished in many ways. Here are just a few tips:
- **Ask for volunteers to serve on a “tenants’ council.”** The council could meet informally once a month to discuss issues of concern in the complex and to plan the upcoming community-wide events. Don’t be discouraged if only one or two people get involved initially. With success, more will join.
  - **Whenever possible,** have tenants set the meeting agendas. Whether it is through a tenant council or simply by collecting suggestions at community events, make sure tenants know they play a key role in defining the direction of community-building efforts.
  - **Give tenants a chance to comment on plans for the property.** Even the simplest issues can be turned into opportunities for community building. If a fence is going to be built or replaced, before doing so, discuss the plan at a meeting and allow tenants to air concerns or suggestions. You may hear ideas that can make the end result more attractive. In those situations where you cannot act on a suggestion, you have the opportunity to explain your reasons to your tenants, and at least have them experience a level of participation that they did not previously have. Along similar lines, by listening to tenant concerns, you may discover that a relatively simple adjustment in policy can result in a significant increase in overall tenant satisfaction.

- 8. Pick projects that can succeed.** Don't promise more than you can deliver. Make sure that easily implemented changes are done promptly so that tenants can see the results. While it is important to take on the larger goals as well (such as getting rid of drug activity in the rest of the neighborhood), short-term results are needed to help tenants see that change is possible.
- 9. Develop a communications system.** This can be as elaborate as quarterly or monthly newsletters, complete with updates from management, articles from tenants, advertisements from local merchants, and referrals to local social service agencies. Or it may be as simple as use of a centrally located bulletin board where community announcements are posted. Whatever the process, the key lies in making sure that your tenants are aware of the information source and that they find it useful enough to actually read it.
- 10. Implement basic crime prevention measures.** In addition to the general community-building techniques described, various traditional crime-watch techniques can also be implemented. Apartment-watch training can be provided to your involved tenants. Contact a crime prevention officer in your area for more details. Crime prevention specialists can help facilitate the first apartment watch meeting and discuss the practices of local law enforcement. Examples include:

  - **Make sure tenants have the manager's phone number readily accessible,** and that they know to call if they suspect illegal activity. Of course, tenants should call 9-1-1 immediately if they witness a crime in progress or any life-threatening, emergency situation. They should also contact police non-emergency services to discuss illegal activity that is not immediate in nature. Encourage tenants to contact the manager after they have contacted 9-1-1, in the case of immediate and life-threatening situations, as well as to contact management any other time they suspect illegal activity in the complex. The sooner your tenants advise you of a problem, the more opportunity you have to solve it before the situation gets out of hand.
  - **Encourage tenants to develop a list of phone numbers for each other.** By sharing phone numbers, tenants can contact each other with concerns, as well as organize reporting of crime problems by multiple tenants. Note that sharing phone numbers among tenants should be done on a voluntary basis only — those who do not want to participate should not be required to.
  - **Distribute a list of local resources.** The resource list should include numbers for police, fire, and medical emergency services (9-1-1 in most areas) as well as hotlines for local crime prevention, substance abuse problems, employment assistance, and any number of other services and organizations that may be able to assist your tenants.
  - **Purchase a property engraver for each complex.** Encourage tenants to engrave their driver's license number on items of value — video recorders, cameras, televisions, etc. Then post notices of the fact that tenants in the complex have marked their property for identification purposes. Burglars would rather steal property that can't be traced.
  - **Apply "crime prevention through environmental design" changes.** If tenants cannot see the problem, they cannot report it. The chapter on Preparing the Property covers environmental design approaches in detail. Essentially, it is important that lighting, landscaping, and building design combine to create an environment where drug dealers, burglars, and other criminals don't want to be. Make it difficult to break in, close off escape routes, and make sure accessible areas can be easily observed by people throughout the complex.
- 11. Encourage nearby neighbors and apartment complexes to get involved.** Solving the whole problem may require encouraging similar steps in adjacent apartment complexes or making sure neighbors in nearby single-family homes also get involved. As a starting point, invite area neighbors to at least some of the community events held at the complex each year.

## WARNING SIGNS OF DRUG ACTIVITY

*The sooner it is recognized, the faster it can be stopped.*



### COMPLAINTS WE HAVE HEARD:

“The neighbors tell me my tenants are dealing drugs. But I drove by *three* different times and didn’t see a thing.”

### ADVICE WE WERE GIVEN:

“You’ve got to give up being naive. We could stop a lot more of it if more people knew what to look for.” — Narcotics detective

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## The Drugs

While many illegal drugs are sold on the street, the following are most common:

1. **Cocaine and Crack.** Cocaine is a stimulant. Nicknames include coke, nose candy, blow, snow, and a variety of others. At one time cocaine was quite expensive and generally out of reach for people of low incomes. Today, the price has dropped to the point that it can be purchased by all economic levels. Cocaine in its powder form is usually taken nasally (“snorted”). Less frequently, it is injected.

“Crack,” a derivative of cocaine, produces a more intense but shorter high. Among other nicknames, it is also known as “rock.” Crack is manufactured from cocaine and baking soda. The process does not produce any of the toxic waste problems associated with methamphetamine production. Because crack delivers a “high” using less cocaine, it costs less per dose, making it particularly attractive to drug users with low incomes. Crack is typically smoked in small glass pipes.

Powdered cocaine has the look and consistency of baking soda and is often sold in small, folded paper packets. Crack has the look of a small piece of old, dried soap. Crack is often sold in tiny “Ziploc” bags, little glass vials, balloons, or even as is — with no container at all.

In general, signs of cocaine usage are not necessarily apparent to observers. A combination of the following are possible: regular late-night activity (e.g., after midnight on weeknights), highly talkative behavior, paranoid behavior, constant sniffing or bloody noses (for intense users of powdered cocaine).

2. **Methamphetamine.** Methamphetamine is a stimulant. Nicknames include: meth, crank, speed, crystal, STP, and others. Until the price of cocaine began dropping, meth was known as “the poor man’s cocaine.” Meth is usually ingested, snorted, or injected. A new, more dangerous form of methamphetamine, “crystal meth” or “ice,” can be smoked. “Pharmaceutical” grade meth is a dry, white crystalline powder. While some methamphetamine sold on the street is white, much of it is

yellowish, or even brown, and is sometimes of the consistency of damp powdered sugar. The drug has a strong medicinal smell. It is often sold in tiny, reseal-able plastic bags.

Hard-core meth addicts get very little sleep and they look it. Chronic users and “cooks” — those who manufacture the drug — may have open sores on their skin, bad teeth, and generally appear thin and unclean. Paranoid behavior combined with regular late-night activity are potential indicators. Occasional users may not show obvious signs.

Because of the toxic waste dangers associated with methamphetamine production, we have included additional information on dealing with methamphetamine labs in a separate chapter.

- 3. Tar Heroin.** Fundamentally, heroin is a powerful pain killer — both emotionally and physically. Nicknames include brown sugar, Mexican tar, chiva, horse, smack, “H,” and various others. Heroin is typically injected.

Tar heroin has the look of creosote off a telephone pole, or instant coffee melted with only a few drops of water. The drug has a strong vinegar smell. It is typically sold in small amounts, wrapped in tinfoil or plastic. Paraphernalia that might be observed include hypodermic needles with a brown liquid residue, spoons that are blackened on the bottom, and blackened cotton balls.

When heroin addicts are on the drug, they appear disconnected and sleepy. They can fade out, or even fall asleep, while having a conversation. While heroin began as a drug of the wealthy, it has become a drug for those who have little income or are unemployed. Heroin addicts don’t care about very much but their next “fix” — and their clothes and demeanor reflect it. When they are not high, addicts can become quite aggressive. As with most needle users, you will rarely see a heroin user wearing a short-sleeved shirt.

- 4. Marijuana.** Marijuana is also known as grass, weed, reefer, joint, “J,” Mary Jane, cannabis, and many others. Marijuana is smoked from a pipe or a rolled cigarette, and typically produces a “mellow” high. However, the type and power of the high varies significantly with the strength and strain of the drug.

The marijuana grown today is far more powerful than the drug that became popular in the late ‘60s and early ‘70s. Growers have developed more sophisticated ways to control growth of the plants and cause high output of the resin that contains THC — the ingredient that gives marijuana its potency. Today’s marijuana is often grown indoors to gain greater control over the crop and to prevent detection — by competitors, animals, or law enforcement. It takes 90 to 180 days to bring the crops from seed to harvest.

Users generally appear disconnected and non-aggressive. The user’s eyes may also appear bloodshot or dilated. Usage of marijuana crosses all social and economic levels.

Marijuana is generally sold in plastic bags, or rolled in cigarette paper. The smell of the smoke has been described as a “musky” cigarette smoke.

## Warning Signs in Residential Property

The following list describes signs of drug activity that either you or neighbors may observe. As the list will show, many indicators are visible at times when the landlord is not present. This is one reason why a solid partnership with trusted neighbors is important.

Note also, while some of the indicators are reasonably conclusive in and of themselves, others should be considered significant only if multiple factors are present.

This list is primarily targeted to tenant activity. For information on signs of dishonest applicants, see the chapter on Applicant Screening.

### *Dealing*

Dealers sell to the end user — so they typically sell small quantities to many purchasers. Dealing locations are like convenience stores — there is a high customer traffic with each customer buying a small amount.

Neighbors may observe:

- **Heavy traffic.** Cars and pedestrians stopping at a home for only brief periods. Traffic may be cyclical, increasing on weekends or late at night, or minimal for a few weeks and then intense for a period of a few days — particularly pay days.
- **Exchanges of money.** Cash and packets traded through windows, mail slots, or under doorways.
- **Visitors lack familiarity.** Visitors appear to be acquaintances rather than friends of the residents.
- **People bring “valuables”** into the unit. Visitors regularly bring televisions, bikes, VCRs, cameras — and leave empty-handed.
- **Odd car behavior.** Visitors may sit in the car for a while after leaving the residence or may leave one person in the car while the other visits. Visitors may also park around a corner or a few blocks away and approach on foot.
- **“Lookouts.”** Frequently these will be younger people who tend to hang around the rental during heavy traffic hours.
- **Regular activity at extremely late hours.** For example, frequent commotion between midnight and 4:00 in the morning on weeknights. (Both cocaine and methamphetamine are stimulants — users tend to stay up at night.)
- **Various obvious signs.** This may include people exchanging small packets for cash, people using drugs while sitting in their cars, syringes left in common areas or on neighboring property, or other paraphernalia lying about.

Landlords may observe:

- **Failure to meet responsibilities.** Failure to pay utility bills or rent, failure to maintain the unit in appropriate condition, general damage to the property. Some dealers smoke or inject much of their profits — as they get more involved in the drugs, they are more likely to ignore bills, maintenance, and housekeeping.

### *Distribution*

Distributors are those who sell larger quantities of drugs to individual dealers or other, smaller distributors. They are the “wholesale” component, while dealers are the “retail” component. If the distributors are not taking the drugs themselves, they can be difficult to identify. A combination of the following indicators may be significant:

- **Expensive vehicles.** Particularly when owned by people otherwise associated with a lower standard of living. Some distributors make it a practice to spend their money on items that are easily moved — so they might drive a \$50,000 car while renting a \$20,000 unit.
- **Pagers and cellular phones.** Particularly when used by people who have no visible means of support.
- **A tendency to make frequent late-night trips.** Many people work swing shifts or have other legitimate reasons to come and go at late hours. However, if you are seeing a number of other signs along with frequent late-night trips, this could be an indicator.
- **Secretive loading of vehicles.** Trucks, trailers, or cars being loaded and unloaded late at night in a hurried, clandestine manner. “Load and distribution houses” (most likely to be found in border states) are essentially repackaging locations and involve moving large quantities of drugs.

### *Marijuana Grow Operations*

Grow operations are hard to identify from the street. They are more likely to be found in single-family residential units than in apartments. In addition to the general signs of excessive fortifications or overly paranoid behavior, other signs are listed below.

Neighbors may observe:

- **Electrical wiring that has been tampered with.** For example, evidence of residents tampering with wiring and hooking directly into power lines.
- **Powerful lights on all night** in the attic or basement. Growers will be using powerful lights to speed the development of the plants.

Landlords may observe:

- **A sudden jump in utility bills.** Grow operations require strong lighting.
- **A surprisingly high humidity level** in the unit. Grow operations require a lot of moisture. In addition to feeling the humidity, landlords may observe peeling paint or mildewed wallboard or carpet.
- **Rewiring efforts or bypassed circuitry.** Again, grow operations require a lot of electricity — some use 1,000-watt bulbs that require 220-volt circuits. The extra circuitry generally exceeds the power rating for the rental and can burn out the wiring — resulting in fires in some cases, or often the need to rewire before you can rent the property again.
- **Various obvious signs.** For example, basements or attics filled with plants, lights, and highly reflective material (e.g., tinfoil) to speed growing.

### *Meth Labs*

Once a meth “cook” has collected the chemicals and set up the equipment, it doesn’t take long to make methamphetamine. While it once took 12 hours or more to cook a batch in the old style “ether labs,” such labs are not common today because quicker, easier methods have been developed. The newer “mom and pop” labs can produce methamphetamine in 2-4 hours.

Clandestine labs have been set up in all manner of living quarters, from hotel rooms and RVs, to single-family rentals or apartment units. Lab operators favor units that offer extra privacy and a lack of attention by the landlord or manager. In rural settings it’s barns or houses well away from other residences. In urban settings it might be houses with plenty of trees and shrubs blocking the views, or apartment or hotel units

that are well away from the easy view of management. However, while seclusion is preferred, clandestine labs have been found in virtually all types of rental units.

Neighbors may observe:

- **Strong ammonia smell.** Very similar to cat box odor (amalgam process of methamphetamine production).
- **Other odd chemical odors.** The smell of other chemicals or solvents not typically associated with residential housing.
- **Chemical containers.** Chemical drums or other chemical containers with their labels painted over.
- **Smoke breaks.** If other suspicious signs are present, individuals leaving the premises just long enough to smoke a cigarette may also be an indicator. Ether is used in meth production. Ether is highly explosive. Methamphetamine “cooks” get away from it before lighting up.

Landlords may observe:

- **Many empty containers of over-the-counter cold or allergy medicines.** New, faster methods of “cooking” methamphetamine require the use of large quantities of over-the-counter cold medicines that contain the drug ephedrine. The average cold sufferer may leave one or two empty cold medicine containers in the trash. The presence of many such emptied-out boxes, bottles, or blister packs is a definite warning sign.
- **Strong unpleasant/chemical odors.** A particularly strong cat box/ammonia smell within the rental may indicate usage of the amalgam process for methamphetamine production. The odor of ether, chloroform, or other solvents may also be present.
- **A large number of matchbooks in the units.** Cooks will need hundreds, if not thousands, of matchbooks to get enough red phosphorus from their striker plates. As such, you may observe that someone has been purchasing matchbooks by the case.
- **Chemistry equipment.** The presence of flasks, beakers, and rubber tubing consistent with high school chemistry classes. Very few people practice chemistry as a hobby — if you see such articles, don’t take it lightly.
- **A dark red residue on counter tops, coffee filters, or aluminum foil in the unit.** The red residue may be left from the use of red phosphorus in the manufacturing process. The cooks usually get the red phosphorus from the striker plates of matchbooks.
- **A maroon-colored residue on aluminum sashes or other aluminum materials in the unit.** The common ephedrine process of methamphetamine production does not give off the telltale ammonia/cat box odor. However the hydroiodic acid involved *does* eat metals and, in particular, leaves a maroon residue on aluminum.
- **Bottles or jugs used extensively for secondary purposes.** For example, milk jugs and screw-top beer bottles full of mysterious liquids.
- **Discarded chemistry equipment.** Garbage containing broken flasks, beakers, tubing, or other chemical paraphernalia.

Note: If you have reason to believe there is a meth lab on your property, leave immediately, wash your face and hands, and call the narcotics division of your local law enforcement agency to report what you know. If you have reason to believe your exposure has been extensive, contact your doctor — some of the chemicals involved are highly toxic. For more information about meth labs, see the chapter on clandestine drug labs.

## General Signs

The following may apply to dealing, distribution, or manufacturing.

Neighbors may observe:

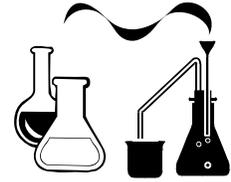
- **Expensive vehicles.** Regular visits by people in extremely expensive cars to renters who appear to be significantly impoverished.
- **A dramatic drop in activity after police are called.** If activity stops after police have been called, but before they arrive, this may indicate usage of a radio scanner, monitoring police bands.
- **Unusually strong fortification of the unit.** Blacked-out windows, window bars, extra deadbolts, surprising amounts spent on alarm systems. Note that grow operators and meth “cooks,” in particular, often emphasize fortifications — extra locks and thorough window coverings are typical.
- **Frequent late-night trips by one of the residents at the property.** Sometimes it isn’t the visits *to* the property, but the trips *from* it that indicate the activity. Such behavior could be a significant sign if the trips are made from a location where other indicators of drug activity are also observed. Repeated short trips — by foot, car, or bicycle — could be indicators of a strategy to operate from the home while “closing” the drug deal away from it.
- **Firearms.** Particularly assault weapons and those that have been modified for concealment, such as sawed-off shotguns.

Landlords may observe:

- **A willingness to pay rent months in advance, particularly in cash.** If an applicant offers you six months’ rent in advance, resist the urge to accept, and require the person to go through the application process. By accepting the cash without checking, you might have more money in the short run, but your rental may suffer damage, and you may also damage the livability of the neighborhood and the value of your long-term investment.
- **A tendency to pay in cash combined with a lack of visible means of support.** Some honest people simply don’t like writing checks, so cash payments by themselves certainly don’t indicate illegal activity. However, if other signs are also noted, and there are large amounts of cash with no apparent source of income, get suspicious.
- **Unusual fortification of individual rooms.** For example, deadbolts or alarms on interior doors.
- **Willingness to install expensive exterior fortifications.** If your tenants offer to pay surprisingly high dollar amounts to install window bars and other exterior fortifications, they may be interested in more than prevention of the average burglary.
- **Presence of any obvious evidence.** Bags of white powder, syringes, marijuana plants, etc. Also note that very small plastic bags — the type that jewelry or beads are sometimes kept in — are not generally used in quantities by most people. The presence of such bags, combined with other factors, should cause suspicion.
- **Unusually sophisticated weigh scales.** The average home might have a food scale or a letter scale — perhaps accurate to an ounce. The scales typically used by drug dealers, distributors, and manufacturers are noticeably more sophisticated — accurate to gram weights and smaller. (Of course, there are legitimate reasons to have such scales as well, so don’t consider a scale by itself, as an indicator.)

- **Large amounts of tinfoil, baking soda, or electrical cords.** Tinfoil is used in grow operations and meth production. Baking soda is used in meth production and in the process of converting cocaine to crack. Electrical cords are used in meth labs and grow operations.

## IF YOU DISCOVER A CLANDESTINE LAB...



### COMPLAINTS WE HAVE HEARD:

“There was a time when I didn’t even know what a ‘precursor chemical’ was. Now I know all about methamphetamine labs. So far it has cost me more than \$10,000 to deal with one property with a meth lab on it. And we’re still not done.”

### ADVICE WE WERE GIVEN:

“Some of the acids used in meth production don’t have any ‘long-term’ effects — it’s all immediate. They damage your lungs if you breath the vapors and they’ll burn your skin on contact.” — Narcotics detective

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*Because methamphetamine labs represent a potential health hazard far greater than other types of drug activity, we have included this section to advise you on how to deal with the problem. This information is intended to help you through the initial period, immediately after discovering a meth lab on your property. For information about warning signs of methamphetamine labs and other drug activity, see the previous chapter on the Warning Signs of Drug Activity.*

## The Danger: Toxic Chemicals in Unpredictable Situations

There is very little that is consistent, standard, or predictable about the safety level of a methamphetamine lab. The only thing we can say for sure is that you will be better off if you leave the premises immediately. Consider:

- **Cleanliness is usually a low priority.** “Cooks” rarely pay attention to keeping the site clean or keeping dangerous chemicals away from household items. The chemicals are rarely stored in original containers — often you will see plastic milk jugs, or screw-top beer bottles, containing unknown liquids. It is all too common to find bottles of lethal chemicals sitting open on the same table with the cook’s bowl of breakfast cereal, or even next to a baby’s bottle or play toys.
- **Toxic dump sites are common.** As the glass cooking vessels become brittle with usage, they must be discarded. It is common to find small dump sites of contaminated broken glass, needles, and other paraphernalia on the grounds surrounding a meth lab, or even in a spare room.
- **The chemicals present vary from lab to lab.** While some chemicals can be found in any meth lab, others will vary. “Recipes” for cooking meth get handed around and each one has variations. So we cannot say with any certainty which combination of chemicals you will find in a lab you run across.
- **“Booby traps” are a possibility.** Other meth users and dealers may have an interest in stealing the product from a cook. Also, as drug usage increases, so does paranoia. Some cooks set booby traps to protect their product. A trap could be as innocent as a trip wire that sounds an alarm, or as lethal as a wire that pulls the trigger of a shotgun or causes the release of deadly chemical gases.

- **The risk of explosion and fire is high.** Ether, commonly used in some drug labs, is highly explosive. Its vapor can be ignited by the spark of a light switch. Under some conditions, a bottle could explode just by jarring it. Meth lab fires are generally the result of an ether explosion — the result can be instant destruction of the room, with the remainder of the structure in flames.
- **Health effects are unpredictable.** Before the law enforcement community learned of the dangers of meth labs, they walked into them without protective clothing and breathing apparatus. The results varied — in some cases officers experienced no ill effects, while in others they developed “mild” symptoms such as intense headaches. However, in other cases, officers experienced burned lung tissue from breathing toxic vapors, burns on the skin from coming into contact with various chemicals, and other more severe reactions.
- **Many toxic chemicals are involved.** The list of chemicals that have been found in methamphetamine labs is a long one. Some are standard household items, like baking soda. Others are extremely toxic or volatile like hydroiodic acid (it eats through metals), benzene (carcinogenic), ether (highly explosive), or even hydrogen cyanide (also used in gas chambers). For still others, like phenylacetic acid and phenyl-2-propanone, while some adverse health effects have been observed, little is known about the long-term consequences of exposure.

## What to do if You Find a Lab

1. **Leave.** Because you will not know which chemicals are present, whether or not the place is booby-trapped, or how clean the operation is, don’t stay around to figure it out. Do not open any containers. Do not turn on, turn off, or unplug anything. Do not touch anything, much less put your hand where you cannot see what it is touching — among other hazards, by groping inside a drawer or a box, you could be stabbed by the sharp end of a hypodermic needle.

Also, if you are not sure you have discovered a clandestine lab, but think you may have, don’t stay to investigate. Make a mental note of what has made you suspicious and get out.

2. **Check your health and wash up.** As soon as possible after leaving the premises, wash your face and hands and check your physical symptoms. If you have concerns about symptoms you are experiencing, call your doctor, contact an emergency room, or call a poison control center for advice.

Even if you feel no adverse effects, as soon as is reasonably possible, change your clothes and take a shower. Whether or not you can smell them, the chemical dusts and vapors of an active meth lab can cling to your clothing the same way that cigarette smoke does. (In most cases, normal laundry cleaning — not dry cleaning — will decontaminate your clothes.)

3. **Alert your local police.** Contact the narcotics unit of your local law enforcement agency. (After hours, call your police emergency number, 9-1-1 in most areas.) If you are unsure of whom to call, contact your police services through their non-emergency numbers listed in your phone book. Because of the dangers associated with clandestine lab activity, such reports often receive priority and are investigated quickly. Typically, the law enforcement agency will coordinate with the local fire department’s hazardous materials team.
4. **Arrange for cleanup.** Before you can rent the property again, you will need to decontaminate it. Cleanup procedures are evolving and regulations on cleanup vary significantly from state to state. Start by getting any appropriate information from the law enforcement and hazardous materials officials who dealt with your unit. Ask for suggestions on whom to contact in your area — generally

county or state health officials will need to be involved and will have information on methods for decontamination.

Also, if there are remaining issues to be addressed with your tenants, do so. However, when a meth lab is discovered, your tenants will typically have either already left or will no longer have any interest in possessing the unit, so while there may be other issues to resolve, physical removal of tenants is usually not one of them.

Depending on the level of contamination present, cleanup may be as simple as a thorough cleaning of all surfaces and removal of absorbent materials (e.g., stuffed furniture and rugs), or as complex as replacing flooring or drywall. On very rare occasions demolition of the entire structure may be required. Again, contact your local health officials for details.

Because of the range of chemicals involved, and the differing levels of contamination possible, we cannot accurately predict the length of time involved to get a contaminated property back into use.

*“Yes, but...”*

*“If lab sites are so toxic, how can meth lab “cooks” live there?”*

The short answer is: because they are willing to accept the risks of the toxic effects of the chemicals around them. Meth cooks are often addicted to the drug and are often under its influence during the cooking process. This makes them less aware and more tolerant of the environment, as well as more careless with the chemicals they use and more dangerous to those around them.

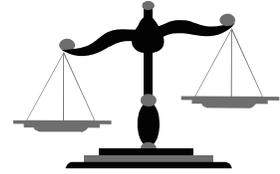
Meth cooks are frequently recognized by such signs as rotting teeth, open sores on the skin, and a variety of other health problems. Some of the chemicals may cause cancer — what often isn’t known is how much exposure it takes, and how long after exposure the cancer may begin. Essentially, meth cooks have volunteered for an uncontrolled experiment on the long-term health effects of the chemicals involved.

Also, there are occasions when meth cooks are forced to leave as well. For example, reports of explosions and fires are among the more common ways for local police and fire officials to discover the presence of a lab — while fighting the fire, they discover the evidence of drug lab activity.

Finally, you face a different set of risks in a meth lab than do the cooks. The cooks know which compounds they are storing in the unmarked containers. They know where the more dangerous chemicals are located and how volatile their makeshift setup is likely to be. When you enter the premises, you have none of this information, and without it you face a much greater risk.

## CRISIS RESOLUTION

*Stop the problem before it gets worse.*



### COMPLAINTS WE HAVE HEARD:<sup>1</sup>

“The problem is these landlord-tenant laws don’t give us any room. The tenants have all the rights and we have hardly any. Our hands are tied.”

### ADVICE WE WERE GIVEN:

“Serving eviction papers on drug-house tenants is not the time to cut costs. Unless you already know the process, you are better off paying for a little legal advice before you serve the papers than for a lot of it afterward.”

“The secret is very simple: Landlords who do their legal homework *before* they serve the eviction notice almost always win in court.”

“Tell them to read a current copy of the landlord-tenant law. Too many landlords haven’t looked at it in years.”

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## The Basics

Address problems — quickly and fairly — as soon as they come up. Know how to respond if a neighbor calls with a complaint. If eviction is required, do it efficiently. If you don’t know, ask a skilled attorney.

## Don’t Wait — Act Immediately

Effective property management includes early recognition of noncompliance and immediate response. Don’t wait for rumors of drug activity and don’t wait for official action against you or the property (e.g., warning letters, fines, closure, or forfeiture). Prevention is the most effective way to deal with rental-based criminal activity. Many drug operators have histories of noncompliant behavior that the landlord ignored. If you give the consistent message that you are committed to keeping the property up to code and appropriately used, dishonest tenants will learn that they can’t take advantage of you or your property.

The following are three of the more common reasons why landlords put off taking action, as well as some reasons why you may want to act anyway:

- **Fear of the legal process.** Many landlords don’t take swift action because they are intimidated by the legal process. However, the penalty for indecision can be high — if you do not act, and then accept rent while knowing that a tenant is in noncompliance, you may compromise your ability to take any future action about the problem. Your position is strongest if you consistently apply the law whenever

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<sup>1</sup> Note that some “complaints” contain inaccurate or incomplete assumptions about legal rights or procedure.

tenants are not in compliance with the rental agreement or your landlord/tenant laws. Your position is weakened whenever you look the other way.

- **Fear of damage to the rental.** Some landlords don't act for fear the tenant will damage the rental. Unfortunately, such inaction generally makes the situation worse. Problem tenants may see your inaction as a sign of acceptance. You will lose what control you have over the renter's noncompliant behavior; you will lose options to evict while allowing a renter to abuse your rights; and you will likely get a damaged rental anyway — if they are the type who would damage a rental, sooner or later they will.
- **Misplaced belief in one's tenants.** While developing this manual, we heard this story, and similar ones, with considerable frequency: “The people renting the property aren't dealing the drugs. We haven't had any problems with them. The drug dealers are their friends who often stay at the property. So what do we do? The tenants aren't making trouble — it's these other people.” Ask yourself: Did your “innocent” tenants contact you or the police when the drug activity first occurred? Or did they acknowledge the truth only after you received phone calls from upset neighbors or a warning from the police? (Also: Is your “innocent” tenant breaking your rental agreement by having long-term guests or subtenants?)

To be sure, tenants can be victimized by friends or relations — for those tenants who seek you out and ask for assistance, help as best you can. But be careful of stories you hear from tenants who don't admit to problems until after you have received complaints from neighbors or police. The sooner tenants who “front” for others realize they will be held responsible, the sooner they may choose to stop assisting in the crime.

## The Secret to Good, Low Cost Legal Help

If you are not familiar with the process for eviction, contact a skilled landlord/tenant attorney *before* you begin. By paying for a small amount of legal advice up front, many landlords have saved themselves from having to pay for a lot of legal help further down the road. The law may look simple to apply, but as any landlord — or tenant — who has lost in eviction court can attest, it is more complicated than it seems. While researching this manual, we repeatedly heard from both landlords and legal experts that the vast majority of successful eviction defenses are won because of incorrect procedures by the landlord and *not* because the landlord's case is shown to be without merit.

*With a crisis tenant problem, contact a skilled landlord/tenant attorney **before** you serve the eviction notice.*

If you don't know a good landlord/tenant attorney, find one. If you think you “can't afford” an attorney, think again. Too often, out of fear of paying an attorney fee, landlords make mistakes in the eviction process that can cost them the equivalent of many months rent. Yet many evictions, *when done correctly*, are simple procedures that cost only a fraction of a month's rent in attorney's fees.

Finding a good landlord/tenant attorney is relatively easy. Check your yellow pages phone directory for those attorneys who list themselves as specialists under the subcategory of “landlord and tenant.” Generally, you will find a very short list, because few attorneys make landlord/tenant law a specialty. Call at least three and interview them. Ask about how many evictions they do per month and how often they are in court on eviction matters. In our experience, the safest bets are those attorneys who do many evictions — they see it as a major part of their practice, not a sideline that they advise on infrequently. Once you find attorneys who have the necessary experience, pick the one you feel most comfortable working with and ask that person to help.

## Choices for Eviction

The most common types of eviction notices used in California are described below. These notices cover the great majority of situations that a residential landlord will deal with. However, there are additional eviction procedures for some unique situations. Further, some communities in California have created additional laws that further regulate eviction procedures. Frequently these requirements are coupled with rent control regulations and place limits on some types of eviction notices that a landlord can serve. Our purpose here is to acquaint landlords with the basic choices they face when criminal activity by a tenant is discovered. See the *Appendix* for references to the exact wording of the law, particularly California Civil Code of Procedure 1161 & 1162.

*The choices described here match the statewide law and apply, as described, in California communities where local law does not further regulate eviction options.*

- **“No-cause” evictions (30-day notice during the first year, 60 days after that):** No-cause notices may generally be used to terminate “periodic” tenancies such as month-to-month rentals. You may evict such tenants for no cause by giving at least 30 days notice during the first year of tenancy and at least 60 days notice after the first year. The notice may be served at any point during the rental period. If, after the notice period expires, the tenants have not moved out, start the court process (unlawful detainer). Landlords often find this to be one of the easier notices to use because it does not involve accusing the tenant of wrongdoing — as a result, there may be less to argue about if the case goes to court. However, be sure to document your reason for eviction in case you are asked to prove that you are not evicting the tenant illegally — for example retaliating against the tenant for requesting repairs or discriminating on the basis of the tenant’s membership in a protected class.

**Note:** No-cause notices may *not* be served on Section 8 tenants during the initial rental period,<sup>1</sup> nor may they be served on tenants who are on a lease, except at the end of the lease term. However, for standard month-to-month, or week-to-week tenancies, this can be a very powerful option. Also, those California jurisdictions that have rent control ordinances often do not allow “no-cause” evictions, even if the rental agreement defines the tenancy as a month-to-month. In these cases and when the property receives federal funds, like HUD subsidies or tax credits there are “for cause” notice procedures you must use, typically variations on one of the 3-day notices defined below.

- **3-day notice to pay rent or quit:** Versions of this notice may be used in virtually all residential rental situations in California. This is essentially a three-day “perform or quit” notice — the tenant has three days to pay the rent or move out. The notice can be served as soon as the rent is past due — for example if the rent is due on the first of the month, the notice can be served on the *second*. (Note this exception: when the first of the month is not a business day, don’t consider rent past due until the first business day of the month has come and gone. For example, if the first of the month is a Sunday, and Monday is a business day, wait until Tuesday — the *third* of the month — to serve the notice.)

If full payment is offered during the 3 day period, accept it. However, be careful not to accept partial payment from tenants after serving this notice unless you wish to discontinue the eviction process — acceptance of partial payment generally invalidates the notice. This notice can also be served on Section 8 tenants, even if you have received the subsidized portion of the rent — if a Section 8 tenant hasn’t paid his/her portion of the rent, a 3-day notice may be served.

- **3-day notice to “perform or quit”:** If your tenant is not in compliance with the rental agreement, or not in compliance with the duties of tenants described in the Civil Code, you may serve a notice that

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<sup>1</sup> Check with an attorney prior to serving a no-cause notice on a Section 8 housing voucher tenant. California Civil Code 1954.535 appears to require that at least 90 days notice, not 30 days, be given when issuing a no-cause notice to a Section 8 housing voucher tenant in California.

requires the tenant to correct the problem (“perform”) or move out (“quit”) within 3 days. This notice is for all other lease violations that *can* be remedied, besides being late with the rent. (See 1161(3) of the California Code of Civil Procedure.) The law says that when a tenant “continues in possession” after neglecting or failing to perform conditions or covenants of the lease, he/she may receive three day’s notice in writing demanding the performance of the violated conditions or covenants. The tenant must, within three days, perform the conditions of the lease to save the lease from forfeiture. A “forfeited” lease would mean the tenant is “guilty” of unlawful detainer of the property and proceedings to evict can commence.

Note that some California jurisdictions require additional, or longer, notice for some types of violations — such restrictions are generally intended to give tenants more time to correct violations before facing possible eviction.

This notice allows the tenant to remedy the problem, if possible, and stay on. As such, it is appropriate to use the notice to correct noncompliant behavior. This notice covers virtually *any* “repairable” violation of the lease or rental agreement. Just a few examples of when this notice might be used:

- Violation of a “no pets” rule.
- Failure to meet the tenant’s obligation to maintain the premises (for example storing garbage instead of disposing of it, or minor damage to the unit).
- Storing inoperable vehicles or too many vehicles on the premises if the rental agreement forbids such action.
- Disabling a smoke detector.
- Violating a “no-subletting” requirement (could also be served *without* option to correct, see “3-day quit” notice).

Note that, if the effect of the noncompliant behavior can’t be undone (e.g., by repair or payment) you may serve the notice *without* option to perform — that is, the notice will simply require that the tenant move out, period.

➤ **3-day notice to quit:** This is the most severe notice that can be served under California law and, as such is reserved for serious lease violations, illegal behavior, and noncompliant behavior that cannot be undone. It is, by far, the least-used notice of the ones discussed here. However, when tenant activity has reached the point of causing serious harm to a neighborhood, it is the one notice that should be used. Each of the **bold terms** listed below is defined by legal tradition and case law, so it is essential you seek competent legal advice before attempting to serve this notice. While it is always important to speak with a skilled landlord/tenant attorney when you are unsure of the eviction process, given the seriousness of this notice, getting good legal advice is particularly important when considering serving this notice. Note also that some local jurisdictions with rent control place additional restrictions on the use of this notice.<sup>1</sup> Except where further limited by local law, a landlord may use the 3-day quit notice in one of five situations:

*Speak to an attorney before using this notice! Also, check your local law: some jurisdictions in California limit the conditions under which this notice may be used.*

- The tenant has violated lease conditions and covenants that “**cannot afterward be performed.**” Such violations would be so serious that a 3-day cure or quit notice is not appropriate because there is no way to “cure” or “undo” the harm done.

<sup>1</sup> The conditions for the 3-day quit notice as described here are based on statewide law and are applicable, as described, in most California jurisdictions. However, a few jurisdictions have added regulations which impact this issue. It is important, therefore, to check for local ordinances that may place further restrictions on the conditions under which you may use this notice.

- The tenant has “**committed waste**” upon the premises. “Waste” means serious, intentional damage or negligent failure to maintain. Minor damage would be addressed through a 3-day cure or quit notice, but if the tenants take an ax to the place, or intentionally burn the kitchen down, it would qualify as waste and justify a notice that is not curable.
- The tenant is **maintaining, committing, or permitting the commission of a “nuisance”** upon the premises. What’s a “nuisance?” Generally, this means any behavior that seriously disturbs the neighbors’ peace, causes a neighborhood health hazard, or creates similar type of harm. The term is also specifically defined by California law to include such activities as manufacturing, selling, growing, distributing, or giving away illegal drugs from the premises. In general, this notice would be reserved for nuisances that are quite serious and you have credible neighbors and/or City officials willing to testify in court.
- The tenant is **using the premises for an unlawful purpose**. Theoretically an “unlawful purpose” could be anything from using the premises to operate a business without a license to engaging in drug distribution, prostitution, or any number of other crimes. Again, speak with your attorney before serving an eviction notice for this cause.
- The tenant **assigns or sublets** the premises **contrary to the conditions or covenants of the lease**. The law allows subletting to be handled with either a three-day “perform or quit” or this 3-day “quit” notice, so check with your attorney to decide where your situation fits in.

Because this notice can remove a tenant relatively quickly, and without the option to cure the problem, practical experience suggests that courts may weigh evidence more cautiously in such situations. While the same “standard of proof” exists with this kind of notice as with any other eviction notice a landlord might serve, should the tenant decide to fight such a notice in court, the landlord would be well-advised to ensure that the testimony of police officers, government officials, or the testimony of credible neighbors as witnesses is available.

Our research indicates use of this notice is surprisingly rare, but we encourage its application when two conditions are met: 1) A serious violation of the lease has occurred that gravely harms or endangers the neighbors and the harm will continue until the tenants are out. 2) You have solid proof of the violation through police testimony or a combination of reliable witnesses and written documentation. Again, enlist the help of an experienced attorney before serving this notice.

- **Mutual agreement to dissolve the lease.** A frequently overlooked method. Write the tenant a letter discussing the problem and offering whatever supporting evidence seems appropriate. Recommend dissolving the terms of the lease, thus allowing the tenant to search for other housing without going through the confrontation of the eviction process. Let Section 8 renters know that mutual agreement to dissolve the lease is permissible under the program and does not threaten eligibility.

Make sure the letter is evenhanded — present evidence, not accusations. Make no claims that you cannot support. Have the letter reviewed by an attorney familiar with landlord/tenant laws. Done properly, this can be a useful way to solve a problem to both your tenant’s and your own satisfaction without getting tied up in a legal proceeding. Done improperly, this will cause more problems than it will solve. Don’t try this option without doing your homework first.

Again, if illegal activity *is* going on, most tenants will take the opportunity to move on.

## How to Serve the Initial Notice

While evictions are often resolved by agreement of the two parties prior to completion of the full unlawful detainer process, in those cases where a tenant requests a trial, the details of the eviction process

will be analyzed. As one landlord puts it: “90% of the cases lost are not lost on the bottom-line issues, but on technicalities.” Another points out: “Even if you have police testimony that the tenants are dealing drugs or committing crimes, you still have to serve the notice correctly.”

Eviction options include a legal process that you must follow. In addition, the process may also be affected by the provisions of your rental agreement or Section 8 contract. Begin by reading your rental contracts and landlord/tenant laws — one of the best tools you can develop is a comfortable, working knowledge of the law. In any eviction, whether the issue is nonpayment, perform or quit, or just a no-cause notice, take the following steps to serve the initial notice:

- **Start with the right form.** When available, use current forms already developed for each eviction option. Forms that have been written and reviewed for consistency with state and local law can generally be purchased through property management associations or legal documents publishing companies. See the resources page in the *Appendix* for sources we found. You can, of course, have your attorney generate the appropriate notices as well.
- **Fill it in correctly.** If it is a for-cause notice, you must cite the specific breach of law or lease that the tenant has violated. In addition, briefly describe the tenant’s noncompliant behavior. You will need to have the correct timing of the notice recorded. For example, with a three day notice, if the notice doesn’t allow three full days to perform, that fact may be grounds for losing in eviction court. There will be other elements to include. For example, if it is a Section 8 rental, you may need to note that a copy of the notice is being delivered to the local Public Housing Agency.
- **Time it accurately.** Cases can be lost because a landlord did not extend the notice period to allow for delivery time, did not allow sufficient time for a tenant to remedy a problem, or did not accurately note the timing of the process on the notice itself.
- **Serve it properly.** California law states that you must attempt to serve the tenant in person before using other methods. In the event that you are unable to hand deliver the notice to your tenant, you may give it to a competent substitute person at the dwelling and mail another copy of the notice directly to the tenant at their home address. Alternatively, if you are unsuccessful in hand delivering the notice, you may use so-called “nail and mail” service, whereby the notice is attached to an obvious place on or near the entrance of the dwelling and a second copy is mailed the same day. Note that, if you serve by “nail and mail,” you may be required to lengthen the timing of the notice by five days. Discuss with your attorney the issue of service of notice at the tenant’s place of employment, if known.
- **Don’t guess — get help.** As mentioned earlier, unless you are comfortable with the process, consult with an attorney who is well experienced in landlord/tenant law before you serve an eviction notice. If you have drug activity on your property, you already have a major problem. Now is not the time to cut corners in order to save money. Using the correct legal process now could save you thousands in damages, penalties, and legal fees down the road.

If, as a result of serving the notice, the tenant either corrects the problems (e.g. pays the rent or repairs the violation) or moves out, the process is complete. However, if the tenant remains in the unit without having complied with the notice, your next step is to start the unlawful detainer process. At this point, if you are not sure how the process works, and you haven’t already met with an attorney, do so. It will generally cost you less money in the long run if you hire a competent attorney to guide you through the process.

## The Unlawful Detainer Process

The popular belief is that an eviction notice is sufficient to force a tenant to move out by the date specified on the notice, as if a three day notice counts down to physical removal from the property — it doesn't. In fact, the notice is just the first step. Technically, the landlord's first notice to vacate means that, should the tenant not move out by the date specified, then the landlord may file suit to regain possession of the property. While tenants may move out before the initial notice expires, if they do not, the landlord will need to start a legal action to regain possession of the property. In California, a tenant who remains in the rental property after the expiration of a correctly served notice is "guilty" of unlawful detainer. So technically, the landlord must then sue on the basis that the tenant is unlawfully detaining the property, and request that the court find in the favor of the landlord and require the tenant to leave.

In cases where a tenant wishes to resist eviction, the tenant will be allowed to remain on the premises until a landlord has received a court judgment against the tenant. Then, if forced physical removal of the tenant is required, it will be done by a local law enforcement official — generally a sheriff or marshal. The actual procedure varies somewhat by jurisdiction. The following steps outline the process in brief:

- **Service of "Summons and Complaint."** After the notice has expired and the tenant did not cure the problem or move out, the next step is to file a complaint with the Civil Court Clerk in your jurisdiction and have a "summons and complaint" served on the tenant. While you have other options, it is best to use a professional process server because the stakes are high — your final court outcome may hinge on correct, appropriately documented service procedures. In any case, no one who is a party to the suit may serve these documents. Also, every tenant on the lease must be named and served, which raises the issue of something called an "Arrieta claim" and how a landlord should handle it when there may be people in the unit whom the landlord does not know.

*Every tenant must be named and served, which is difficult when there are people in the unit whom the landlord doesn't know. The solution is something called a "Prejudgment Claim of Right to Possession."*

This issue is dealt with by serving a "Prejudgment Claim of Right to Possession." At the same time the summons is served on the tenants, it is often wise to serve one or more blank "Prejudgment Claim of Right to Possession" forms with the "summons and complaint" attached. The process server, sheriff, or marshal will ask if there are any other adult occupants than those whose names already appear on the summons and complaint. If the tenants say yes, the server leaves a copy of the Prejudgment Claim of Right to Possession for each previously unnamed adult. This process is designed to prevent unknown tenants from coming forward at the court hearing and making an "Arrieta claim" — in effect stating that because they were not properly notified of the pending legal action, that an eviction proceeding against all occupants of the unit cannot go forward.

- **Wait five days, sometimes more.** Tenants generally have five days from the service of the summons and complaint to respond. However, in some instances, tenants will be permitted additional response time — for example, tenants are permitted a longer response time if the summons and complaint is not delivered to them by personal service. Also, if any unnamed occupants receive a Prejudgment Claim of Right To Possession, they will have ten days to respond. If the tenants do not "respond," the landlord can go back to court after the response time expires and get a "default judgment" in the landlord's favor.
- **Request a trial date, which will usually be within 20 days.** If the tenants choose to contest the eviction, a trial date is set, generally within 20 days of the tenant's response date. However, you must request that a trial be scheduled, so don't lose time by putting off the request.

- **Go to court.** At court, a “writ of possession” is issued if the decision is in favor of the landlord (either as a result of a default judgment or the outcome of a trial.) The clerk of the court delivers the writ to the marshal or sheriff for lock-out.
- **The sheriff schedules physical removal.** The law enforcement official will then serve a notice on the tenant which explains that they face removal from the property by law enforcement if they do not move on their own within five days. If the tenants *still* don’t move, then the marshal will physically remove them from the property. From the time law enforcement starts the process, it commonly takes a week or two before a marshal or sheriff arrives to physically remove the tenant, though sometimes it takes longer.

The above description is a very brief summary. It is not intended to give the landlord who is new to the process all the information necessary to succeed — every eviction has unique circumstances and unique issues that can influence the outcome, and length, of the proceeding. Further, some issues not explored in this manual can further slow the eviction process — a bankruptcy filing by one of the tenants being a common example. Nevertheless, the eviction process is *fast* compared to other civil actions in California (or in other states, for that matter). Perhaps the most compelling point we can make about the entire eviction process — from service of notice to arguing in court — is this: Eviction is an expensive, time-consuming, frustrating way to “screen” tenants. You will save much heartache and considerable expense if you screen your tenants carefully *before* you rent to them, instead of discovering their drawbacks after you are already committed.

*Remember: eviction is a terrible way to “screen” your tenants! It is far easier to turn down a bad applicant than it is to evict a bad tenant.*

## If a Neighbor or Other Tenant Calls with a Complaint

If a neighbor calls to report drug activity — or any other type of dangerous, illegal, or nuisance activity — at your rental, take these steps:

- **With the initial call, stay objective and ask for details.** Don’t be defensive and, equally, don’t jump to conclusions. Your goal is to get as much information as you can from the neighbor about what has been observed. You also want to avoid setting up an adversarial relationship — if it is criminal activity, you need to know about it.

Also, make a commitment that you will not reveal the caller’s name to the tenant without permission (unless subpoenaed to do so). In the past, some landlords — perhaps believing that neighbor reports were exaggerated — have treated dangerous situations too casually and told criminals the names of neighbors who called to complain. If the neighbors have exaggerated, you do no harm by protecting their names. If they haven’t, you could put them in real danger by revealing too much.

Ask the caller for:

- **A detailed description of what has been observed.**
- **A letter documenting what has been observed,** sent to you and to your local law enforcement agency. If you have Section 8 tenants, have a copy sent to the local Public Housing Agency also.
- **Name, address, and phone number,** if willing to give it. If neighbors don’t know you, they may be unwilling to give you their names on the first call. This is one reason why we recommend you meet neighbors and trade phone numbers before a crisis occurs. Consider: If the only thing

neighbors know about you is that you have rented to a drug dealer or other criminal, they will have reason to be cautious when they call.

- **Names of other citizens you can call who could verify the complaint,** or ask the caller to encourage other neighbors to contact you. You will need more evidence than the phone call of a single neighbor to take meaningful action. Explaining this need may help further encourage the neighbor to ask others to call. Also, having multiple complaints can help protect the caller by taking the focus off of a single complainant as the “cause” of the criminal activity being discovered.

A single call from one neighbor doesn’t necessarily mean your tenants are doing anything illegal. However, a single call is justification to pursue the matter further.

➤ **Find out more.** Go to other sources for additional information and assistance. Your goal is to collect enough information to verify any problems at the rental, and then to take appropriate action.

- **Get in touch with other neighbors.** Even if your tenant is running a high-volume dealing operation or other openly transacted criminal activity, it is likely that some neighbors will suspect nothing — many citizens are unobservant or give their neighbors a wide benefit of the doubt. However, while some neighbors may be unaware of the scope of the problem, it is also likely that others will have a lot to tell you.
- **Contact the police.** Get in touch with a district officer for your area and contact the narcotics division of your local law enforcement agency if drug dealing is suspected, or other division for other crimes such as prostitution, etc. Determine what, if anything, they have on record that can be revealed.
- **Call a crime prevention specialist.** Many communities have police officers assigned to crime prevention work. Others hire civilians to perform the task. Start by calling your local law enforcement agency and asking for information about neighborhood crime prevention assistance. Reports from neighbors may have been called into local crime prevention staff. Crime prevention staff may also have additional information that can help you address the situation effectively.
- **If you feel comfortable doing it, consider a property visit.** Again, few tenants involved in serious illegal activity are model renters. Discovery of maintenance violations may provide sufficient basis for serving eviction notices without having to pursue the more difficult route of developing a civil level of proof that dangerous criminal behavior has occurred. Be sure that all rules are applied equally as to all residents, so there cannot be a valid claim that the suspected criminals are being treated differently.

➤ **Once you’ve identified the problem, address it.** If you discover that your tenant is innocent, contact the neighbor who called and do your best to clear up the matter. If you discover no drug activity but strong examples of disturbing the neighbors’ peace or other violations, don’t let the problem continue — serve the appropriate notices. Likewise, if you become confident your property is being used for drug activity or other dangerous behavior, take action. Advise the police of your findings and your plan. The following are examples of options you might pursue. The specifics will be dependent on the amount of evidence you have and the level of neighborhood disturbance:

- **If the evidence allows it, serve an eviction notice for alleged drug or other criminal activity.** The type of notice will depend upon the circumstances. California law allows a very fast notice, a “3-day quit” eviction notice for nuisance and illegal activity. (See Choices for Eviction, page 50.) This notice would only be appropriate if you have clear and objective evidence of serious illegal activity that is harming the livability of the neighborhood routinely.

Keep in mind that, if your tenant wishes to fight in court, you will need to establish a civil — not criminal — level of proof that criminal or nuisance activity has occurred. This is a lower level of proof than local law enforcement would need to get a conviction. Nevertheless, allegations of drug activity or other dangerous activity should be made with care. Given the seriousness of the charge, always contact an attorney before proceeding with this option.

Note that, if the tenants are involved in illegal activity, they often move out quickly rather than fight the eviction — it won't help their drug operation to appear in court. One exception is Section 8 tenants or other subsidized housing tenants who, for reasons unrelated to the drug activity, may be more inclined to resist eviction (as described in the chapter on The Section 8 Program).

Note also that your failure to act if you have grounds for serving such a notice may also put you at risk. If your tenants act on a threat, or continue to carry out extreme behaviors that endanger the community, you could face legal action by harmed neighbors or by the local government for not taking action once you had knowledge of the problem.

- **If you have the option, and the threat to the neighbors or property is not immediate, consider a no-cause notice.** This option is not available in all rental situations. However, it *is* an option in most month-to-month private rental situations in California<sup>1</sup>. While not possible in many Section 8 rentals (except under limited circumstances, see footnote \_\_\_ on page \_\_\_) [whatever page the section 8 reference to a no-cause 90 day notice ends up on ] or longer-term leases, a no-cause notice can be a legal, less adversarial way to solve the problem in a month-to-month situation.
- **Consider serving notice for other apparent causes.** “Cause” in this case could be disturbance of the neighbors’ peace, nonpayment of rent, or any other significant issue of noncompliance with the rental agreement that you have discovered since cashing the last rent check. Again, drug activity is commonly coupled with other lease violations, such as a failure to maintain the property, additional people living in the unit, and other noncompliant behavior. Note that notices served for many types of noncompliant behavior are of the “perform or quit” type — that is, if the tenant can fix the problem in a legally defined period of time, the tenant will be allowed to stay in the unit.
- **Consider mutual agreement to dissolve the lease.** This option is described in more detail in the discussion of choices for eviction, beginning on page 50. It can be a very effective way to solve a problem without the accusations of a court process and the risk to the tenant of having an eviction show up on his/her credit record. Again, if illegal activity *is* occurring, many tenants will take the opportunity to move on.

Finally, if you evict someone for criminal activity, consider *sharing* the facts of the situation carefully. You could accurately report anything that was of public record, or indicate that you “received complaints” from others without creating liability for defamation. Landlords who are screening tenants down the road may not find out about it unless the information is documented. If it is a Section 8 renter, make sure the local Public Housing Authority has a letter from you on file. Also, contact the screening company or credit reporting service you use and advise them of the circumstances — they may also be able to keep track of the information. Note also, that if you always get money judgments when you do an eviction, at least that information will show up on the applicant’s credit report after the 60 days “freeze” period on eviction records.

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<sup>1</sup> A notable exception being those communities with rent control and/or “just cause” eviction ordinances.

## If You Have a Problem with a Neighboring Property

When chronic problem activity is present in a neighborhood, every affected citizen makes a conscious or unconscious choice about what kind of action to take. The choices are to move away, to do nothing and hope the problem will go away, or to take action to stop the problem. Doing nothing or moving away usually means the problem will remain and grow larger — somebody, someday will have to cope with it. Taking action, especially when it involves many neighbors working together, can both solve the problem and create a needed sense of community.

Many neighbors are under the impression that solutions to crime are the exclusive responsibility of the police and the justice system — that there isn't much an individual citizen can do. Actually, there is a lot that citizens can do, even *must* do, in order to ensure they live in a safe and healthy neighborhood. Getting more involved in your neighborhood isn't just a good idea — it is how our system of law and civic life was designed, and the only way it can really work. With that in mind, the following is a list of proven community organizing techniques to help you begin. Contact the Crime Free Rental Housing Program coordinator for more ideas.

➤ **Find others concerned about the problem and enlist their help.**

As you consider the steps described below, keep in mind that *multiple* neighbors following the same course of action will magnify the credibility and effectiveness of each step. In particular, several neighbors calling a government agency separately about the same problem will usually raise the seriousness of the problem in the eyes of the agency. Involvement of multiple neighbors also increases safety for everyone. People involved in illegal activity might target for revenge *one* neighbor they perceive as causing them problems, but are less likely to try to identify and harass multiple people.

*Take advantage of the strength — and power — of many people working toward the same goal.*

➤ **Make sure police are informed in detail.** It doesn't matter how many police we have if people don't call and tell them where the crime is. Even if you have had the experience of calling without getting the results you expect, *keep calling*. Even as you also follow other recommendations of this section, *keep working with police* throughout the process.

Establishing a connection with a particular officer who works the area regularly is often a key to success. Here are some more strategies for working with police most effectively:

- **Report incidents when they occur.** Call 9-1-1 if it is an emergency or call police narcotics detectives, gang units, and other special enforcement units as appropriate. You may need to do some research to find out which part of what agency deals with a particular type of problem.
- **Keep activity logs or diaries** about the address when disturbances are frequent, and encourage neighbors to do the same. Share copies of these logs with an officer, in person if possible.
- **Encourage civil abatement action.** When speaking with enforcement officials, be aware that state law includes civil mechanisms for fines, and seizure or forfeiture of nuisance property, particularly when it is involved in manufacturing, storing, furnishing, or selling illegal drugs. In California, the action is brought under Health and Safety Code 11780 or several provisions of the Penal Code.

➤ **Consider direct contact with the property owner.** Many activists contact the owner directly and ask for help in solving the problem. While the POP officers may do this for you, it is an option available to any citizen directly. Understand that there may be a risk to your personal safety in contacting some irresponsible owners, so be sure to plan your approach carefully. In general, try a friendly, cooperative approach first — it usually works. If it doesn't, then move on to more adversarial tactics. Here are some tips for the friendly approach:

- **Use tax records to find the owner.** The county’s assessment and taxation records will identify who owns the property.
  - **Contact the owner.** It is amazing how often this simple step is never taken. Discuss the problem and ask for assistance with stopping it.
  - **Suggest landlord training.** If the property is a rental, consider delivering a copy of this manual and encourage the owner to attend landlord training offered by property management associations and some local police agencies.
  - **Describe events.** Provide the owner with specific descriptions of events: Answer the questions who, what, where, when, and how about each event.
  - **Give police references.** Give the property owner the names of officers who have been called to the address. (Names of specific officers are far more useful than general statements like “The police have been out frequently.”)
  - **Help locate criminal records if appropriate.** Learn how to access criminal background information, or how the property owner can. For example, if an occupant may have a criminal record in the county, the court house will have records.
  - **Share activity logs.** Give copies of activity logs to the landlord, if it appears the landlord will use them to support lease enforcement actions.
- **Enlist the help of others.** If it becomes apparent that the problem will not get resolved without more effort, it may be time for more aggressive action. This may take a higher level of organization and structure for the neighborhood. Here are some approaches to apply more pressure:
- **Remind others to call.** After any action you take, call several other neighbors and ask them to consider doing the same thing, whether it is reporting an incident to police, calling the landlord, or speaking to a city official. *Do not ask neighbors to call and repeat your report. Do ask neighbors to make an independent assessment of the problem you have observed and, if they also consider it a problem, to report it as well.*
  - **Call the Housing Authority.** If the residents are receiving public housing assistance, contact the local Housing Authority and report the problems observed.
  - **Call code inspection.** City regulations typically address exterior building structure and appearance, interior structure and appearance, as well as nuisances in yards such as animals, abandoned cars, trash, and neglect. Most properties with problem residents will have many violations of city or county code as well.
  - **Consider calling the mortgage holder.** Sometimes the holder of the mortgage on a property can take action if the property is not in compliance with local law. Generally, if a financial institution is holding a mortgage on real property, the name of the institution will be listed on the title records, kept by the county.
  - **Write letters.** Document your conversations with a confirming letter to the persons you speak to. If there seems to be no action from owners or managers of neighboring properties after a reasonable time, write them and make a demand for a written response, and threaten to proceed with more official action. Citizens have the power to write letters to *anyone* — mayors, council members, chiefs of police, building inspectors, and many others. Your written documentation can add credibility and legitimacy to a problem that may not have received as much attention as it required. The first letters should be to those in a position to take direct action — a police officer, code inspector or other person tasked with addressing problems like the one you are working on. *Don’t write letters to managerial or political authorities until you have given the “chain of*

*command” a chance to work. Do* write letters to such authorities if it becomes apparent that the help your neighborhood needs is not forthcoming. When necessary, follow up calls or letters with personal appointments.

- **Two strategies of last resort.** Generally, these activities should be undertaken only by a well-organized group, and only when consistent, diligent work with police, neighbors, and city officials has made little or no progress.
  - **Consider getting the media involved.** After making a concerted effort to get results through other means, discussing the problem with the media can be a way to focus more attention — and sometimes resources — on a problem. However, going to the media with your complaint before communicating clearly to the accountable organization can be counterproductive — it can cause justifiable resentment in public officials who feel “blind sided” by the media attention on an issue about which they had no prior warning. Also, be aware that if the problem is associated with criminal drug or gang activity, attracting media attention that results in your being the featured interview subject can put you in a position where your personal safety is more at risk.
  - **Start legal action against the property owner.** Citizens harmed by a nuisance property have successfully pursued lawsuits in small claims court. Groups of neighbors combine to bring one, massive small claim action, where each harmed neighbor sues for the maximum allowable amount. In the final analysis, even the most negligent property owners will take action when they are made to understand fully that it will cost more money to ignore the problem than it will to stop it. Methods for bringing this kind of small claims action was pioneered by an Oakland, California resident who first developed the approach to solve problems in a local neighborhood. The approach is now taught to interested groups under the name of “Safe Streets Now!”<sup>1</sup>

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<sup>1</sup> Phone: (619) 476-9100 ext. 330.

## THE ROLE OF THE POLICE

*Building an effective partnership.*



### COMPLAINTS WE HAVE HEARD:

“The problem is the police won’t get rid of these people when we call. We’ve had dealers operating in one unit for four months. The other tenants are constantly kept up by the activity — even as late as 2:00 or 3:00 in the morning on weeknights.”

“I called police about one of my properties. They wouldn’t even confirm that anyone suspected activity at the place. A month later they raided the house. Now I’m stuck with repair bills from the raid. If they had just told me what they knew, I could have done something.”

### ADVICE WE WERE GIVEN:

“In almost every case, when the police raid a drug house, there is a history of compliance violations *unrelated to the drug activity* for which an active landlord would have evicted the tenant.” — Narcotics detective

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## The Basics

Know how to work with the system to ensure rapid problem resolution. Have a working knowledge of how your local police deal with drug problems in residential neighborhoods.

## Defining the Roles: Landlords and Police

It is a common misconception that law enforcement agencies can evict tenants involved in illegal activity. In fact, only the landlord has the primary authority and responsibility to evict; the police don’t. There are some local and state programs in which an official (such as the City Attorney) can contact the owner and insist on eviction, then take on the action if the owner does not do so. If you receive such a notice, seek legal advice immediately, as you will be charged for the expense of the eviction by officials. In contrast, the role of the police is to address criminal activity and perhaps effect an arrest. But arrest, by itself, has no bearing on a tenant’s right to possess your property.

*Arrest, by itself, has no bearing on tenancy rights.*

Eviction, on the other hand, is a civil process. The landlord sues the tenant for possession of the property. Note the differences in level of proof required: Victory in civil court requires “a preponderance of evidence” — the scales must tip, even slightly, in your favor. Criminal conviction requires proof “beyond a reasonable doubt” — a much tougher standard. Therefore, you may find yourself in a position where you have enough evidence to evict your tenants, but the police do not have enough evidence to arrest

them. Further, even if the police arrest your tenants, and a court convicts them, you still must evict them through a separate process — or, upon release, they have the right to return to and occupy your property. (Note that the abandonment process would not be applicable, as persons who are in custody would not have voluntarily exited the rental unit.)

Many landlords are surprised to discover the degree of power they have to address criminal activity and eliminate threats to the neighborhood. As one police captain put it, “Even our ultimate action against a drug operation in a rental — the raid and arrest of the people inside — will not solve a landlord’s problem, because the tenants retain a legal right to occupy the property. It’s still the tenants’ home until they move out or the landlord evicts them. And, as is often the case, those people do not go to jail, or do not stay in jail long.” It’s surprising, but the person with the most power to stop the impact of an individual “drug house” operation or other criminal activity being operated from a rental property is the property owner — the landlord. Ultimately, the landlord can remove all tenants in a unit. The police can’t.

The only time law enforcement may get involved in eviction is to enforce the outcome of your civil proceeding. For example, when a court issues a judgment requiring a tenant to move out and the tenant refuses, the landlord can go to the sheriff (or other appropriate law enforcement agency) and request that the tenant be physically removed. But until that point, law enforcement cannot get directly involved in the eviction process. However, the police may be able to provide information or other support appropriate to the situation — such as testifying at the trial, providing records of search warrant results and police calls at the property, or standing by while you serve notice.

Again, criminal arrest and civil eviction are unrelated — the only connection being the possibility of subpoenaing an arresting officer or using conviction records as evidence in an eviction trial. No matter how serious a crime your tenants have committed, eviction remains your primary responsibility.

## What to Expect

Police officers are paid, and trained, to deal with dangerous criminal situations. They are experts in enforcing criminal law. They are not authorities in civil law. As such, if you have tenants involved in illegal activity, while you should inform the police, do not make the common but inaccurate assumption that you can “turn the matter over to the authorities” and they will “take it from there.” Because landlord/tenant laws are enforced only by the parties in the relationship, when it comes to removal of a tenant, landlords are the “authorities.” With that in mind, you will get best results from the police by providing any information you can for their criminal investigation, while requesting any supporting evidence you can use for your civil proceeding.

In order to get the best cooperation, remember the rule of working with any bureaucracy: The best results can be achieved by working one-on-one with the same contact. Further, while this rule applies to working with any bureaucracy, it is especially important for working with a law enforcement agency where, if police personnel share information with the wrong people, they could ruin an investigation or even endanger the life of an officer. If an officer doesn’t know you, the officer may be hesitant to give you information about suspected activity at your rental.

Your best approach may be to call the local police station and arrange to speak directly with an officer who patrols the district where your rental is located or with an officer who serves on a specialized problem solving team such as a “problem-oriented policing” officer or a “community policing” officer. It may also be possible to make an appointment with police officers who specialize in gang or drug enforcement. There can be a huge difference between the type of information available through a single, anonymous phone call and the amount of assistance possible if you arrange an in-person meeting.

The type of assistance will vary with the situation — from advice about what to look for on your property, to documentation and testimony in your eviction proceeding. But remember that it is not the obligation of the police to collect information necessary for you to evict problem tenants. While you can get valuable assistance from the police, don't wait for the police to develop an entire criminal case before taking action. If neighbors are complaining that you have drug activity or other dangerous situations in your rental, investigate the problem and resolve it as quickly as possible (see the previous chapter on Crisis Resolution, particularly the discussion of choices for eviction, beginning on page 50). Do not assume that the situation at your unit must be under control simply because the police have yet to serve a search warrant at the property.

## **Crime/Nuisance Abatement and Forfeiture Laws**

Both California and federal laws allow such actions as heavy fines against owners who allow drug manufacturing or sale on their property, closure of such property for specified time periods, or even forfeiture of such property when the owner's knowledge and failure to act against the crime can be established.

While it is valuable for you to be aware of the specific laws that affect your area, it is a characteristic of most that they are rarely used on properties that are actively managed. If you are screening your tenants with care, enforcing your rental agreements, and meeting your responsibility to provide safe and clean housing, it is unlikely that such laws will ever be used against you or your property. These laws generally give a property owner several chances to show good faith by taking concrete steps to fix a problem, before they allow government officials to take any punitive action.

Recognizing that a small minority of landlords are unethical or negligent, lawmakers around the country have endeavored to create nuisance abatement laws that give neighbors and other impacted citizens some enforcement mechanisms to stop the destruction or deterioration of a community.

In addition to the specific laws related to illegal drug and nuisance abatement, a program known as Safe Streets Now!,<sup>1</sup> originally from Oakland, California teaches neighboring property owners and residents to file lawsuits when chronic crime remains unaddressed by those responsible.

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<sup>1</sup> (619) 476-9100 ext. 330

## SUBSIDIZED HOUSING PROGRAMS



### ADVICE WE WERE GIVEN:

“Few landlords realize it, but you can screen a subsidized applicant the same way you screen any applicant. Most don’t screen subsidized applicants for rental history — either because they don’t know they can, or because they are too excited about the guaranteed rent check.”

“For landlords the message is simple. Bottom line: If you screen your tenants, Section 8 is a very good program.” — a Section 8 program director

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*The term “Section 8 Housing Choice Voucher” program refers to a tenant-based program in which participants receive a voucher that they can use for rental payment assistance on units of their choice which participate in the program. “Subsidized Housing Programs” includes vouchers as well as project-based section 8, other HUD programs and such subsidies as Tax Credit. Many programs are under the control of the U.S. Department of Housing and Urban Development (HUD) and administered locally by Public Housing Agencies (PHAs).*

### The Basics

Understand the legal and practical differences between publicly subsidized and private renting so you can have a success rate similar to that expected with private rentals.

### Some Benefits

The most important benefit of participating in subsidized housing programs is that, if done responsibly, it helps the entire community. Those landlords who meet their responsibilities and require subsidized housing tenants to do the same provide a valuable service — by renting decent housing to good citizens who otherwise could not afford it. In addition to serving the public good, landlords can enjoy additional direct benefits for their business:

- **Reliable rent.** A large portion of the rent, and sometimes all of it, is guaranteed by the federal government. So, once the paperwork is processed, you’ll likely get the subsidy portion on time, every month. Also, assuming you screen your applicants responsibly, your tenants should be able to pay their portion on time since the amount is predetermined to be within their means.
- **“Fair Market Rent.”** HUD and local Public Housing Agencies work to ensure that subsidized rents do not exceed comparable private rentals in the area. For landlords who are not aware that higher rents are more typical, it may be a pleasant surprise to discover the room to raise your rates. Those who are charging rates comparable to other nearby rentals will receive similar amounts under subsidized housing programs. Those who attempt to “lead” the market in price may suffer somewhat.

## Some Misconceptions

*Public Housing Agencies prescreen their participants along the same guidelines that a landlord should use.*

**False.** The PHA screens only for program eligibility (primarily income level). It is up to the landlord to screen tenants — make sure they can pay the remainder of the rent, check their rental record through previous landlords, and run all other checks the same way you would with a private renter. You are not only legally permitted to, you are *expected* to. Screening applicants, subsidized or not, is both your right and your responsibility: you are entitled to turn down subsidized housing applicants who do not meet your screening criteria and accept those who do. Even guaranteed rent is not worth it, if drug-dealing tenants move in.

As one program manager put it, “For landlords the message is simple. Bottom line, if you screen your tenants, Section 8 is a very good program.”

*Landlords who rent to subsidized housing tenants must use the Public Housing Agency’s model lease.*

**False.** Revised HUD guidelines, developed in 1995, are designed to make it easier for the landlord to use the same lease that is used for nonsubsidized tenants. However, the landlord will be required to use an approved lease addendum, provided by the local housing agency, that adds to and/or modifies some of the conditions of the lease that the landlord typically uses with nonsubsidized tenants.

Note also that the lease addendum and model leases provided by Public Housing Agencies are written to match HUD’s requirements and won’t necessarily include all provisions you are accustomed to using. It is therefore important to be aware of differences between the conditions of your subsidized housing lease and/or lease addendum and the conditions under which you typically rent to non-subsidized tenants.

*Subsidized housing tenants cannot be evicted.*

**False.** This misconception arises primarily from a confusion about the types of notices that can be served on a subsidized tenant. While it is true that, during the initial term of the lease (which is most commonly one year), a subsidized housing lease will forbid the use of “no-cause” or “non-renewal” notices, in general, all “for-cause” notices still apply. So, for example, if a tenant is violating the terms of the lease or damaging the property, a landlord can serve the applicable for-cause notice defined in the lease addendum. Also, HUD regulations now permit landlords in many areas to use a lease that will permit “no-cause” terminations after the first year. Check with your local Public Housing Agency to see whether such an approach is available to you and then have lease language on this issue approved by your attorney prior to using it.

Subsidized housing participants are bound by the same state and local landlord-tenant laws that govern non-subsidized rental relationships. In theory, the only difference should be the wording of the lease. However, there *are* instances when evictions can be more complicated with subsidized housing. Your best approach, as with any eviction, is to speak with an experienced landlord-tenant attorney before starting the process.

*If you evict tenants for drug activity, the local Public Housing Agency will simply let the same people rent again elsewhere.*

**False.** HUD guidelines allow local PHAs to terminate assistance to tenants involved in felony-level manufacture, sale, distribution, possession, or use of illegal drugs. The same guidelines also apply to tenants involved in violent criminal activity.

## APPENDIX



“The only thing necessary for the triumph of evil is for good people to do nothing.”  
— Edmund Burke

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*The following are resources you may wish to use as you pursue your property management goals. We have not attempted to verify the nature, scope, or quality of every reference listed, nor have we made a comprehensive search for all possible resources. Future versions of this manual may include an expanded list.*

### **Rental Housing Associations and Related Organizations**

The type of support offered by each organization varies. Examples of services include: rental forms, continuing education, attorney referrals, answering landlord/tenant questions, legislative lobbying, running credit checks, screening services, and various others. We have provided some basic information about some, but not all, organizations.

**The San Diego County Apartment Association**

8788 Balboa Avenue, Suite B  
San Diego, CA 92123  
Phone: (858) 278-8070  
Fax: (858) 278-8071  
[www.sdaa.com](http://www.sdaa.com)

**The Apartment Owners Association**

3110 Camino Del Rio South, A214  
San Diego, CA 92108  
Phone: (619) 280-7007  
Fax: (619) 280-1647  
[aoasdooffice@aoausa.com](mailto:aoasdooffice@aoausa.com)  
[www.aoausa.com](http://www.aoausa.com)

**California Apartment Association**

980 Ninth Street, Suite 200  
Sacramento, CA 95814  
Phone: 800-967-4222  
Fax: 877-999-7881  
[www.caanet.org](http://www.caanet.org)

### **Western Manufactured Housing Communities Association**

455 Capitol Mall, Suite 800  
Sacramento, CA 95814  
Phone: (916) 448-7002  
Fax: (916) 448-7085  
[www.wma.org](http://www.wma.org)

### **California Association of Realtors**

525 South Virgil Avenue  
Los Angeles, CA 90020  
Phone: (213) 739-8200  
Fax: (213) 480-7724 fax  
[www.car.org](http://www.car.org)

## **Reference Materials**

Check with the associations listed on the previous page for information about both periodicals and handbooks on rental housing issues in California. Other printed references on landlord/tenant issues include:

*Managing Rental Housing, the complete reference guide to managing rental housing in California.* Published by the California Apartment Association, 980 Ninth Street, Suite 2150, Sacramento, CA 95814. (See reference on previous page for more complete information about CAA.)

*The Essentials of Fair Housing*, Fifth Edition. Published by the California Apartment Association, 980 Ninth Street, Suite 2150, Sacramento, CA 95814. (See reference on previous page for more complete information about CAA.)

*The Landlord's Law Book. Vol. 1: Rights and Responsibilities (California)*, by Attorneys David Brown and Ralph Warner, Nolo Press, Berkeley. Includes tear-out forms & agreements.

*The California Landlord's Law Book. Vol. 2: Evictions*, by Attorney David Brown, Nolo Press, Berkeley. Includes tear-out termination and court forms.

*California Tenants A Guide to Residential Tenants' and Landlords' Rights and Responsibilities*, by the California Department of Consumer Affairs, [www.dca.ca.gov/publications/landlordbook/index.shtml](http://www.dca.ca.gov/publications/landlordbook/index.shtml)

*What Should I Know Before I Rent?* by the California State Bar Association, <http://www.calbar.ca.gov/Public/Pamphlets/Rent.aspx>

## **Screening Services**

There is no section in the phone book for "Tenant Screening Companies." You will find them under different headings, depending on the scope of services and the preferred heading of the business, including:

**Real Estate Rental Services.** Some of these will be services to renters, rather than landlords.

**Property Management.** In addition to tenant screening firms, this category includes everything from commercial real estate management firms to residential management companies.

**Credit Reporting Agencies.** Some specialize in tenant verification, some concentrate on the credit reporting needs of other types of businesses.

## Laws

Laws are changed and modified regularly through the action of local, state, and federal legislation, as well as court-generated case law, so it is important to constantly update your knowledge. Examples of key laws that have been referenced in this manual with which a landlord should be familiar are shown below. This list is hardly comprehensive, but it will provide a good introduction:

To review copies of the law directly, visit the California Legislative Counsel's web site at [www.leginfo.ca.gov/index.html](http://www.leginfo.ca.gov/index.html).

For original copies of the law, annotated text, and legal interpretation and advice, contact an experienced landlord-tenant attorney.

- **California Civil Code: Hiring of Real Property, Sections 1940 through 1954.** Covers many issues of the landlord/tenant relationship. Examples: legal definitions, some of the basic duties of landlords and of tenants, the term and renewal of rental agreements, the entry of dwellings by landlords, and many other provisions.
- **California Civil Code section 1951: Disposition of Personal Property Remaining on Premises At Termination of Tenancy, Sections 1980 through 1991.** Outlines procedures and written forms for disposing of personal property when the tenancy has terminated.
- **California Civil Code: Nuisances, Sections 3479 through 3503.** The definition of nuisance conditions and the remedies available to private persons and governmental agencies to abate the nuisance.
- **California Code of Civil Procedure: Nuisance, Action to Abate, Section 731.** More detail about who has the right to bring action against nuisances.
- **California Code of Civil Procedure: Unlawful Detainer, Section 1160 through 1179a.** Lays out the process for evictions. Note that Section 1161 defines when a tenant is “guilty of unlawful detainer” which in effect describes the basic notice options in California.

*Notes*