



Presents:

Just Cause and Understanding the Termination Process in Hayward

December 12, 2019

Who are we?

Project Sentinel, Inc. is a non-profit housing services agency serving many communities in Northern California. Neutral Landlord /Tenant Counseling and Dispute Resolution is one our core services. This includes supporting some Cities with the administration of their rent stabilization hearing and petition processes.

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PLEASE NOTE: We are not able to offer legal advice or legal representation, but we can offer tips, best practices, and an overview of local and State laws. For legal services, please contact an attorney or a lawyer referral service.

Just Cause / Terminations Workshop



AGENDA

1. Hayward RRSO Overview
2. Eviction Protections
3. Noticing Requirements
4. Termination and Eviction Process
5. Tenant Defenses
6. Tips and Challenges
7. Resources

What is the RRSO?



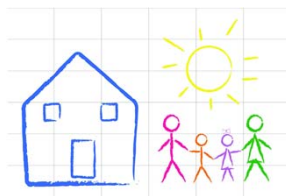
The City of Hayward encourages investment in local residential rental housing by allowing landlords to make a fair return on their real estate investments while also protecting the welfare of its citizens who are its tenants. The goals of the RRSO are to:

1. Stabilize rising rents
2. Provide eviction protections to tenants
3. Ensure a fair rate of return to landlords
4. Provide protection from harassment and retaliation
5. Stop bias about sources of income (including Section 8 vouchers)

Why do eviction protections matter?



Eviction protections provide **tenants in good standing** with **housing stability** by limiting the reasons a landlord can evict a tenant.



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Who has just cause eviction protection?



RRSO Just Cause protections apply to all rental units EXCEPT:

- medical care facilities
- motels, hotels, inns, tourist houses
- boarding houses where tenants stay less than 30 days
- non-profit cooperatives
- non-profit transitional housing
- where owner shares residence including common areas
- certain subsidized affordable housing units
- mobile homes

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Just Causes under the RRSO



What are allowable reasons/causes for termination under RRSO?

- 10 reasons where tenant “at-fault”, some of which require opportunity to cure prior to termination
- 5 reasons where termination is landlord initiated – “no fault”

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Tenant “At-Fault” Causes under the RRSO



1. Failure to pay rent
2. Breach of material term*
3. Refusal to pay for substantial damage beyond “wear and tear”*
4. Refusal to renew same lease terms
5. Disorderly disruption of peace and quiet of other tenants/occupants*
6. Failure to grant landlord access*
7. T convicted of using unit for illegal purpose
8. T used or allowed use of unit or any area controlled by LL for manufacture, sale, distribution or use of controlled substance (under State law)*
9. Violated rules applicable to all units, which T agreed to previously in writing.*
10. T has threatened bodily harm/death to another person on the premises, for which a police report has been filed

**Requires written notice to cease be served (or payment demand for 3.) providing tenant an opportunity to “cure” the fault. Only if not cured, can a termination notice be served.*

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“No-Fault” Causes under the RRSO



Landlord initiated

1. Necessary and substantial repairs requiring tenant to vacate (after obtaining permits)
2. Demolition of unit (after obtaining permits)
3. Owner or owner’s family move-in
4. Owner seeks to recover possession of unit for their principal residence
5. Lawful termination of an employee where employment was condition/consideration for the tenancy

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Tenant “At-Fault” Causes

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Failure to Pay Rent



- Tenant has failed, after 3-days' written notice, to pay lawful rent.

NOTE: As of September 1, 2019, Saturdays and Sundays and other judicial holidays are excluded in from this calculation.

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Breach of Lease



- The Tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement

AND

- Such terms must be reasonable and legal, and have been accepted in writing by the Tenant

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Damage to Property



- The Tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear; and
- T has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises; and
- Such terms must be reasonable and legal, and have been accepted in writing by the Tenant.

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Refusal of New Lease with Same Terms



- The Tenant has refused to agree to a new Rental Agreement upon expiration of a prior Rental Agreement, but only where the new Rental Agreement contains provisions that are substantially identical to the prior Rental Agreement, and is not inconsistent with local, state, and federal laws.

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Nuisance to Others



- The Tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other Tenants or occupants of the premises.

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Failure to Give LL Access



- The Tenant has, after written notice to cease, refused the Landlord access to the unit as required by state of local law.
- Entry by LL or on behalf of LL under CC Sec. 1954 requires:
 1. Lawful Purpose – only for necessary or agreed repairs/services or allowed inspections
 2. Proper Notice – T given at least 24 hours' notice stating time and purpose. Entry during normal business hours. Exceptions in cases of emergency (fire, flooding).
 3. Tenant has right to be present by cannot deny lawful entry.

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Conviction Relating to Use of Unit



- The Tenant is convicted of using the Rental Unit for any illegal purpose.

Merely arrested on suspicion of such a crime is not sufficient.

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Use of Controlled Substances



- Tenant has used or allowed the use of the Rental Unit, or any other area owned or controlled by the Landlord, for the manufacture, sale, distribution, possession, or use of a controlled substance (under State law).

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Violation of Written Rules



- The Tenant has continued, after written notice to cease, to violate legal and **reasonable** written rules and regulations:
 1. that are applicable to all tenants and occupants at the property
 - AND
 2. that such terms have been accepted in writing by the Tenant.

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Threats of Bodily Harm or Death



- Tenant has threatened, either verbally or in writing, to commit a crime which would result in death or great bodily harm to a Tenant, guest, manager, owner, or other person on the premises, for which a **report has been filed** with the Hayward Police Department.

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No Fault Causes

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Necessary and Substantial Repairs



- Landlord seeks in good faith to undertake **substantial** repairs which are necessary
 1. to bring the Property into compliance with codes/laws affecting health and safety or where necessary to address outstanding code violations; and
 2. such repairs cannot be completed while the Tenant resides in the unit.
- **ONLY** after all necessary permits have been obtained.
- When work completed, Tenant **must be given the right of first refusal** to re-occupy the unit.

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Demolition



- Landlord seeks in good faith to recover possession of the Rental Unit(s), in order to remove the such units from the market by **demolition**.
- **ONLY** after all necessary permits have been obtained.

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Owner/Owner's Family Move-In



- Landlord seeks in **good faith** to recover possession
 1. for Landlord's own use as his/her **principal residence**; OR
 2. for the use as **principal residence** by the Landlord's spouse or domestic partner or by the Landlord's or the Landlord's spouse's child, parents, brother, sister, grandparents, or grandchildren.
- Landlord **must** hold as an owner of record at least a 51% interest in the Property.
- Landlord **may not** recover possession if a comparable unit is vacant and available at the Property.

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Owner/Lessor Principal Residence



- A Landlord or lessor seeks in **good faith** to recover possession of the Rental Unit for his/her occupancy as a **principal residence**
- Landlord/Lessor **must have the right** to recover possession of the unit for his/her occupancy as a principal residence under an **existing Rental Agreement** with the current Tenants.

Distinction from prior slide: If there is such a provision in the lease, Landlord is not required to have 51% ownership interest, and cause is permissible regardless of whether another unit in building is vacant.

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Termination of Tenant's Employment



- Lawful termination of Tenant's employment by the Landlord
 1. where such employment was an express condition of, or consideration for, the tenancy under a written Rental Agreement,
 2. the notice of termination is given as provided in Cal. Civ. Code Sec. 1946

Example: Tenant employed as on-site manager and pays discounted (or no) rent as consideration for their employment

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What is NOT a “Just Cause”?



Terminations without any of the 15 Just Causes

- Termination notices **MUST** include reason, including when grounds for eviction are under State or Federal law

End of Lease

- Tenant not required to sign a new lease unless **substantially** identical to prior
- Otherwise goes month-to-month automatically

Sale or Transfer of Rental Property

- Noticing of new ownership information to tenant required

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Noticing

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Noticing Requirements



Notice to Cease: *Before* Termination Notice

- To cure alleged violation by tenant - Sec. 13(b)(2), (3), (5), (13)
- Written and properly served

Notice of Termination: 3/30/60 days

- Detail specific reason for termination
- Copy of notice must be filed with City of Hayward within 30 days!

Notice of Intent (Ellis Act): 120 days / 1 year

- Withdrawal of units from the rental market (Ellis Act evictions) has strict requirements. Consult an attorney.

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Notice to Cease



- Required as written warning for grounds of:
 1. Breach of Lease
 2. Damage
 3. Disruption of peace/quiet enjoyment
 4. Violation of rules/regulations
- Suggested details to include in notice:
 1. Any information necessary to determine date, time, place, and other circumstances concerning the reason of the notice
 2. Sufficient details on how to cure and reasonable period to do so.

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Notice of Termination - Requirements



1. Written notice
2. States the reasons for the termination with specific facts to permit a determination of the date, place and circumstances concerning the reason
3. Properly Served

Important! Failure to specify in the notice either one or more grounds for eviction authorized by state or federal law or good cause as listed above in subsections 1 through 15 in the written notice, notice of termination or the notice to quit, and in the complaint for possession *shall be a defense* of any action for possession of the Rental Unit

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Notice of Termination



Notice to Pay Rent or Quit

- 3 Day* notice if Tenant has failed to pay rent as required

**excludes weekends and judicial holidays*

Termination Notice

- 30 Day notice if Tenant has rented unit for < 1 Year
- 60 Day notice if Tenant has rented unit for > 1 Year

File Copy with City of Hayward

- Within 30 days of serving Tenant, file a copy of Notice with City's Rent Review Office in person, by mail or electronically *RSSO Sec. 16(c)*

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Service of Notices



Notices must be properly “served” on (given to) Tenant(s)! Person who serves the notice must be at least 18 years old.

There are 3 ways to legally serve:

- **Personal service:** You or someone else gives the notice directly to the Tenant in person.
- **Substituted service:** If the tenant is not home, you can leave the notice with a member of the household, at least 18 years old, where the tenant lives AND then mail a second copy to the tenant at the property.
- **Posting and mailing ("nail and mail") service:** If there is no one home to leave the papers with, you can tape or nail the notice to the front door or somewhere where it can be seen easily AND send a copy by mail to the tenant at the property.

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Service of Notices



Proper

- ✓ Give notice to the Tenant in person
- ✓ Post notice on door AND mail
- ✓ Give notice to occupant over 18 AND mail

NOT Proper

- X By email
- X By text
- X Orally
- X By giving the notice to an occupant who is a minor

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Counting Days after Service



- To count the days in the notice period:
 1. The first day is the day *after* the notice is served.
 2. Then count every day on the calendar, but, for 3-day notices to pay rent or quit and 3-day notices to perform or quit, **do not count Saturdays, Sundays, or court holidays.**
- If the notice not served personally and a second copy must be mailed, start counting *the day after you mail* the notice.

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Failure to Serve Notice on City of Hayward



RRSO Section 16 (d) – Failure to Service Notice of Termination and/or Rent Increase Notices on City

- City Manager, at their discretion, may immediately issue a citation for violating the requirement to service notices on the City as required by *RRSO Sec. 16(c)*
- There is no requirement for a first warning.
- Penalties may be imposed in accordance with *RRSO Sec. 18*.
- City Manager shall give notice of a violation within thirty (30) days of the violation.
- The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing.

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Eviction Process

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Constructive Eviction or Retaliation



Is not allowed!

Change
Locks

Cut off
utilities

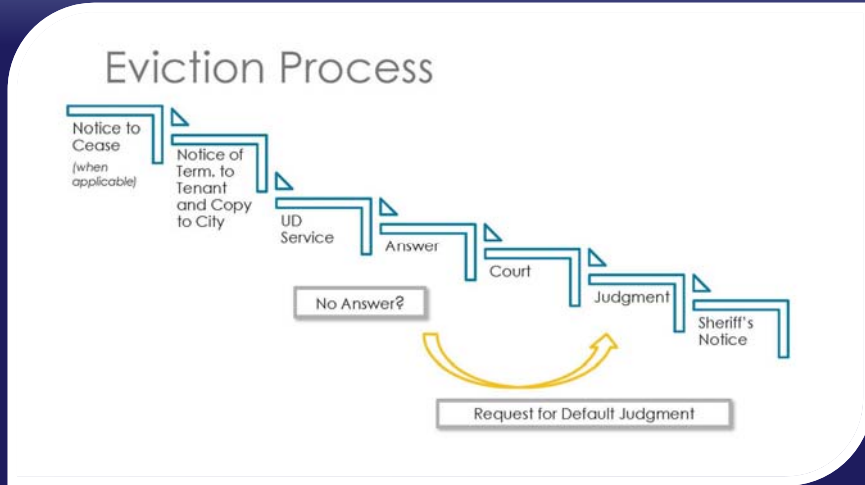
Harass
occupants

Prevent
occupants
from entering

Not address
habitability
issues

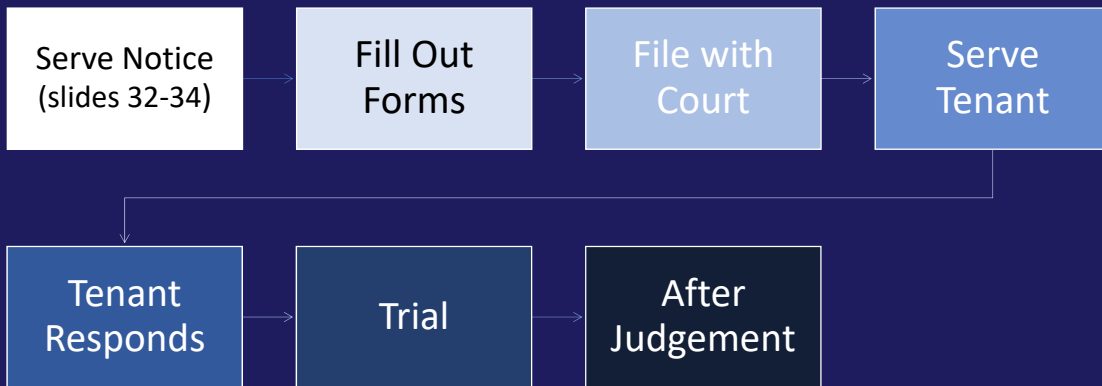
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Steps in the Eviction Process



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Steps in the Eviction Process



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Forms



Summons - Unlawful Detainer-Eviction (Form SUM-130)

Complaint - Unlawful Detainer (Form UD-100)*

Civil Case Cover Sheet (Form CM - 010)

*Video Instructions: <http://www.cc-courts.org/video.aspx?File=UD-100>

File Your Complaint



How to File Your Complaint (<https://www.courts.ca.gov/28665.htm>):

- Make 2 copies of the *Summons* and *Complaint* and take them with the originals to the courthouse in the county where the property is located. Click to [find the court](#) in your area.
- Turn in your forms -- original and copies -- to the clerk. You will have to pay the court filing fee.
- If you cannot afford a filing fee, you can [ask for a fee waiver](#). If the court approves your fee waiver request, you will not have to pay the fees. But if you win your lawsuit and collect money, the court may ask you to pay back the waived fees.
- The clerk will stamp your forms "Filed" and give back 2 file-stamped copies of all the forms. One copy of each is for you. The other is for the tenant. If there is more than one tenant, make extra copies for the other tenants (you can make copies of the file-stamped copy for this purpose). The court keeps the original.

Have the Complaint Served



Serving the Complaint (<https://www.courts.ca.gov/28666.htm>):

- Landlord cannot serve the summons and complaint!
- Laws regarding service of Summons are technical must be adhered to. *Consider using a professional process server to serve the Tenant(s)*. The cost can be included in the judgment.
- Server must complete and sign a Proof of Service of Summons (Form POS-010) and give it to you. Make a copy.
- File the original Proof of Service of Summons with the Court and have a clerk stamp the copy

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Tenant Responds to the Complaint



How long does a Tenant have to file an Answer? (<https://www.courts.ca.gov/27757.htm>)

- If Tenant *personally* served, they have 5 days, excluding Saturdays, Sundays and court holidays
- If Tenant served by “substituted service” (papers served on person at the unit over 18 years old and copies mailed), the tenant has 15 days after the date the server mailed the court papers. For the first 5 of the 15 days, do not count Saturdays, Sundays, or court holidays. The following 10 days counted may be regular calendar days.
- If more than one tenant is being served, there may be different deadlines if they are served at different times and/or different ways.

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Ways a Tenant may Respond to the Complaint



- *Answer* - Tenant may file a response using Answer – Unlawful Detainer (Form UD-105). The Answer may allege *defenses* to the eviction. (see next slides). The Answer must be filed with the Court, with a copy sent to the Landlord.
- *Motion to Quash Service* - Tenant would file this if the Summons and Complaint were not served properly. Good idea to seek legal help to avoid delays and missing deadlines!
- *Demurrer* – A filing that asserts that the Complaint does not state enough facts or elements that the law requires to justify an eviction. Good idea to seek legal help to avoid delays and missing deadlines!

<https://www.courts.ca.gov/27757.htm>

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Tenant Defenses in Unlawful Detainer



- Certain actions or omissions by an owner or actions by tenant may be used by tenant in defense of an unlawful detainer (eviction or UD) lawsuit.
 - Examples:* Tenant not first served a notice to cease prior to termination based on breach or other causes that require opportunity to cure
- An *affirmative defense* is an assertion by a defendant that raises new facts and arguments that defeat the plaintiff's claim even if all of the allegations in the complaint are true.
 - Example:* Eviction based on failure to pay and Tenant argues Landlord has failed to address habitability issues in rental unit

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Tenant Defenses in Unlawful Detainer



Constructive Eviction?

- Actions demonstrated to illegally force out tenant, such as change of locks, cut off utilities, harassment, unaddressed habitability issues

Non Compliance with RRSO?

- Failure to comply with Just Cause or noticing requirements may be used as affirmative defense
- Includes failure to assert compliance in the UD complaint

Retaliatory Eviction?

- Eviction filed in response to a tenant exercising rights under RRSO or State law
- *Examples: seeking eviction after tenant files a petition, requests repairs, informs City of possible code violations*

Right of Refusal

- Tenant has filed a petition and no final decision or agreement has been reached, and tenant has refused to pay portion of increase above the threshold - where petition filed under *Sec. 7(b)(2) or (3)*- or refused to pay the rent increase - where petition filed under *Section 7(b), (4), (5) or (6)*

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Trial



- Once the Tenant files an answer, and if you want to keep moving forward, you can ask for a trial date by filing a *Request to Set Case for Trial - Unlawful Detainer* (Form UD – 150)
- On Form UD-150, you will have to choose if you want to request a jury trial (requires a \$\$ deposit) or have the case decided by a judge.
- Review <https://www.courts.ca.gov/27766.htm> for info about trials and decisions, especially if you will be going to trial without an attorney (*pro se*).

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Decision after Trial



- **If Landlord wins:** If the judge or jury decides you have the right to evict the tenant, the judge will give you a *Judgment of Possession*. The judge or jury may also order the tenant to pay back rent, damages, and costs, like filing fees and attorney fees (if this is in the rental agreement).
 1. After receiving a *Judgment of Possession*, you must fill out and have the court clerk issue a *Writ of Execution* and take the Writ to the sheriff. This lets the sheriff remove and lock the tenant out of the property.
 2. Sheriff will serve Tenant with a notice to vacate the property. This gives the tenant 5 days to move. If the tenant does not move, the sheriff will remove the tenant from the rental unit and lock him or her out.
- **If Tenant wins:** Tenant has the legal right to stay in the property. Sometimes the judge orders the Landlord to pay Tenant's costs and may also decide how much rent Tenant will pay.

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Guide – www.courts.ca.gov



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Landlords: Give Notice to the Tenant (Step 1 of 7)

[Español](#)

1 Give Notice 2 Fill Out Forms 3 File In Court 4 Serve Tenant 5 Tenant Responds 6 Trial 7 After Judgment

The Eviction Process

- [Eviction Overview](#)
- [Step 1](#)
- [Step 2](#)
- [Step 3](#)
- [Step 4](#)
- [Step 5](#)
- [Step 6](#)
- [Step 7](#)

In order to start the eviction process, you, as the landlord, must first give the tenant written notice. If the tenant does not do what the notice asks, you can file an unlawful detainer case in court when the notice period ends.

Sometimes figuring out what type of notice is needed can be difficult. Talk to an eviction lawyer to make sure you are using the right notice and that you are filing it out correctly. Eviction notices are not court forms, but many of the notice forms can be purchased in stores that sell legal forms. Make sure the form you use meets the requirements of current California law, because if there are mistakes in the notice, you might lose the case automatically.

Read more about types of [Eviction Notices](#).

[expand all](#) [collapse all](#)

How to Give Notice

You have to serve the notice on the tenant properly. You can do it yourself, or you can ask a friend to do it. You can also hire a process server. The person who serves the notice must be at least 18 years old.

There are 3 ways to serve the notice:

- **Personal service:** You or someone else gives the notice directly to the tenant in person.
- **Substituted service:** If the tenant is not home, you can leave the notice with a member of the household, at least 18 years old, where the tenant lives AND then mail a second copy to the tenant at the property.

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Tips and Challenges...



Document, document, document

- Especially for “at-fault” causes that require notice to cease – nuisance, breach of lease, denial of lawful entry, etc.

Evictions are highly technical

- Consider hiring legal help to avoid costly mistakes

Educate yourself about eviction laws/process

- Review City materials, court resources and low-cost legal guides (e.g. Nolo Press)

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Resources



City of Hayward – Rent Review Office

- <https://www.hayward-ca.gov/your-government/programs/rent-review-residential-rent-stabilization>
- (510) 583-4454



Alameda County Bar Association Lawyer Referral Service

- <https://www.acbanet.org/need-a-lawyer/>
- 510-302-2222, Option 4



Alameda County Superior Court Self-Help

- <http://www.alameda.courts.ca.gov/Pages.aspx/Representing-Yourself>
- <https://www.courts.ca.gov/selfhelp-eviction.htm>



Nolo Press – California Landlord’s Law Books

- Rights and Responsibilities <https://store.nolo.com/products/the-california-landlords-law-book-lbrt.html>
- Evictions <https://store.nolo.com/products/the-california-landlords-law-book-lbev.html>

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