



Eviction Process for a Resident who has Resided in your Park for 9 Months or More

A "resident" is defined in Civil Code Section 799.31 as *"the owner or operator of a recreational vehicle who has occupied a lot in a park for nine months or more."* A "tenant" is defined in Civil Code Section 799.32 as *"the owner or operator of a recreational vehicle who has occupied a lot in a park for more than 30 consecutive days."* Both terms do apply to residents of longer than nine months.

Again, thanks to your CalOHA, important changes were made to Recreational Vehicle Park Occupancy Law (RVPOL) sections of the Civil Code effective January 1, 1993. While the first five (5) articles of the Mobilehome Residency Law applied up until 1991, only Article 6 (which deals with eviction) applied up until January 1, 1993; now, there is no reference to the Mobilehome Residency Law at all. The RVPOL is complete within itself. *Note: There are exceptions for RVs in mobilehome parks that are on sites licensed for mobilehomes for longer than nine months. See Civil Code Section 798.3 of the Mobilehome Residency Law.*

CalOHA has available for members to download and use, a Month-to-Month Rental Agreement. The agreement must be in writing and must cover all of the facilities available for the use by the tenant, all charges (including any extra charges to be billed), and the term of the tenancy. The Rules and Regulations must be given with the registration agreement or rental agreement (Sections 799.44 & 799.45).

These forms are available from CalOHA and have been reviewed by Rudderow Law Group, a California law firm. *NOTE: The information and forms provided are for general information purposes only, and are not a substitute for competent, individual, professional legal advice.*

Service of Notices

799.65 and 799.66 state that notices shall be given to the tenant in the manner prescribed by Section 1162 of the Code of Civil Procedure. *(Please note that, if service of the three (3) Day Notice to Pay Rent or Quit is served by method 2 or 3 of Code of Civil Procedures Section 1162, some authorities conclude that the tenant has five additional days to pay rent. There is also case law to the opposite. Please also note that if the last day to pay falls on a weekend or legal holiday, the tenant has until the next business day to pay.)*

It is assumed that, prior to evicting a tenant; management has made a conscientious effort to seek compliance with the rules or payment of rent. There are, however, some very important steps you must take prior to the issuance of a 60-Day Termination Notice. (Section 799.70) They are as follows:

For Failure to Pay

1. A five (5) day grace period must be allowed, not including the date the payment is due. The language of the code is: "provided the amount due shall have been unpaid for a period of five days from its due date . . ." (Section 799.65)
2. A three (3) day notice must have been given after the five (5) day grace period expires.

Examples:

- If the rent is due on the first of the month, then the tenant has until the 6th of the month to pay the rent and other charges (unless the 6th day falls on a weekend or a legal holiday in which case the tenant has an additional grace period to the following business day) before a 3-Day Notice can be served. An unlawful detainer action can be filed and served after the expiration of the three (3) day period of notice. Again, if the 3-Day Notice expires on a weekend or a legal holiday, then the tenant has until the next business day to perform under the 3-Day Notice.
- The 3-Day Notice expires on a Saturday. The tenant would have until the close of business on Monday to pay the amount set forth in the notice and no unlawful detainer action could be filed and served until the next business day.

There are separate statutory provisions dealing with "rent" and "covenants": Code of Civil Procedure 1161(2) provides for a three-day notice to pay rent; Code of Civil Procedure 1161(3) discusses a three-day notice to perform covenants.

Three (3) Day Notice to Perform Covenants or Quit

This form was developed because the Three (3) Day Notice to Pay Rent or Quit identifies all outstanding charges as "rent", even though the amount owed may include items not considered "rent" for purposes of Code of Civil Procedure 1159 et seq. (the unlawful detainer statutes). Charges for utilities, late charges, returned check charges and/or services charges are considered "covenants," and must be included on a separate notice. *(NOTE: Late charges should not be included unless they are set forth in a written rental agreement and can be justified by increased costs resulting from late payment. Courts generally frown upon the inclusion of late charges and you risk having the court potentially throw out one of your notices if they are determined unreasonable.)*

Advantages of separating rent from other charges:

1. By listing only rent on one notice, there should be no question as to how much rent is owed and how the amount was determined. On your Three (3) Day Notice to Pay Rent or Quit (for Defaulting Tenants), there is an explanation of the rental rate and the period for which rent is owed.
2. On your Three (3) Day Notice to Pay Rent or Quit (for Defaulting Tenants), there is no place to list the "covenants" or to explain how the charges (in addition to "rent") were determined.
3. By listing the "covenants" on a separate notice, the defaulting tenant is made clearly aware of the type, amount, and time frame for each charge.

4. If there is a defect in one of the notices, then the park owner may still proceed to an unlawful detainer eviction on the remaining notice.

Follow the same directions as for the Three (3) Day Notice to Pay Rent or Quit to process this form.

Combined Three (3) Day Notice to Perform Covenants or Quit & Sixty (60) Day Notice to Terminate Possession

This form combines both the Three-Day Notice and the Sixty-Day Notice, so that the time runs concurrently. If the resident "cures" the notice (by paying the rent) within three days after he is served with this notice, the sixty day notice is canceled. However, if he does not "cure" the three day notice within the allotted time, the sixty day termination of tenancy period has already started to run. At the expiration of the sixty-day period, the park can initiate an unlawful detainer action.

Follow the same directions as for the 60 Day Termination of Tenancy Notice to process this form.

Three (3) Day Notice to Pay Rent or Quit

If the tenant does not pay his rent, you must now serve him with a Three (3) Day Notice to Pay Rent or Quit (Sections 799.65). *(NOTE: The 3-Day Notice is not the same as the 72-hour Notice.)* This form is used for tenants who have not paid rent during the grace period allowed in the RV Park Occupancy Law (RVPOL), to wit: the rent must be due and owing for five-days after its due date and not counting the due date.

If the tenant in question has been a good tenant and has not regularly been late on his rent, you may wish to simply give him the 3-Day Notice in hopes of impressing upon him the urgency of paying. On the other hand, if you wish to terminate residency for non-payment of rent pursuant to Section 799.70 (a), use the Combined Three (3) Day Notice to Pay Rent or Quit & Sixty (60) Day Notice to Terminate Possession.

Combined Three (3) Day Notice to Pay Rent or Quit & Sixty (60) Day Notice to Terminate Possession

This form combines both the Three-Day Notice and the Sixty-Day Notice, so that the time runs concurrently. If the resident "cures" the notice (by paying the rent) within three days after he is served with this notice, the sixty day notice is canceled. However, if he does not "cure" the three day notice within the allotted time, the sixty day termination of tenancy period has already started to run. At the expiration of the sixty-day period, the park can initiate an unlawful detainer action.

Follow the same directions as for the 60 Day Termination of Tenancy Notice to process this form.

60 Day Termination of Tenancy Notice

After being in your park for nine months or more, your customer is now known as a "resident." (Sections 799.23, 799.31 and 799.70).

A completely different set of rules applies in this situation. While the requirement of a written rental agreement is the same, the law limits your reasons for eviction to what is commonly referred to as a "for cause eviction." You must provide a 60-Day Notice of Termination of the right of occupancy specifying one of seven enumerated reasons - Section 799.70(a) through (g).

- a) Nonpayment
- b) Failure to comply with state or local ordinance, regulation or law
- c) Conduct constituting a substantial annoyance
- d) Conviction of prostitution or felony (if act committed on park premises)
- e) Failure to comply with park rules and regulations (7-Day Notice required)
- f) Condemnation of the park
- g) Change of use of the park or any portion thereof

Be sure that you read Article 5 of the RVPOL and are totally familiar with your right as a park owner or manager.

Since termination of tenancy of a resident for other than non-payment of rent may be more difficult to enforce with an unlawful detainer action, you need to consult with your attorney before you prepare and serve this form.

If the resident has not vacated the park at the end of the sixty day period, then it will again be necessary to contact your attorney, who should file an action for "unlawful detainer" in the appropriate court for the eventual removal of that resident.

Rules and Regulations Termination

Terminations for rule violations are becoming harder and harder to obtain. We suggest that you have your attorney to draw up any notice for rule violation involving a "resident." While it may cost you more money at the beginning, you will be money ahead at the end and it may save you a lot of time and grief of having to start over if you serve a defective notice. We also suggest that you do not attempt this type of termination unless and until you have documented that you have given the "resident" friendly reminders and a seven-day notice (of course, copies going into your file) regarding the matter. While the code does not require several seven-day notices be served, it is our opinion that the court may require your serious efforts to resolve the problem prior to going to court. Again, consult your attorney on these matters.

Seven (7) Day Notice to Comply with Rules & Regulations

Before terminating a resident's tenancy for violation of the park's rules and regulations, the park must give the resident the opportunity to correct the violation. See Section 799.70 (e). This form is to be used for this purpose.

Your rules and regulations must be reasonable to be enforceable. You also need to enforce your rules consistently and in a non-discriminatory manner. If you have rust on your car, do not have a rule that says

that the tenants in your park must not have rust on their cars. We are sure you get the point. (Please note that Section 790.70 (e) requires that rules and regulations must be part of the rental agreement. In other words, the rules and regulations must be attached to the written rental agreement.)

What if they owe you rent? What about the cost of the eviction?

Section 799.78 states: *"In any action arising out of the provisions of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs. A party shall be deemed a prevailing party for the purposes of this section if the judgment is rendered in his or her favor or where the litigation is dismissed in his or her favor prior to or during the trial..."* The Recreational Vehicle Park Occupancy Law also states that you have *"a lien upon the recreational vehicle and contents therein for the proper charges due from a defaulting occupant, tenant, or resident."* (Section 799.75)

Storage charges for the recreational vehicle or abandoned personal property can be recovered through the provisions of Civil Code Section 1861 which grants the lien.

In order to exercise this lien, you should contact your attorney, who will need to file the appropriate forms with the court. You may continue to hold the possessions until the court grants or denies the lien. You may find it necessary to prepay for the tow and storage during that time.

Note: It may be easier and faster to process a Department of Motor Vehicles (DMV) lien sale on vehicles when money is owed. Personal possessions (contents) still would have to be sold pursuant to a lien sale under 799.75.

Related products also available from CalOHA

- A Practical Guide to the Eviction Process for Recreational Vehicle Parks
- Month-to-Month Rental Agreement
- Forms and Instructions to Process 30-day Evictions
- Forms and Instructions to Process 60-day Evictions
- Forms and Instructions to Process 72-hour Evictions
- Eviction Signs (necessary for 72-hour evictions)
- DMV Lien Sale Handbook