



## Eviction Process for a Tenant of More than 30 Days but Less than 9 Months

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.*”

We would strongly suggest the use of a rental agreement covering the group of customers who are referred to as “tenants” (longer than 30 days, less than 9 months) in the Civil Code (Sections 799.24, 799.32 and 799.65). CalOHA has available for members to download and use, a Month-to-Month Rental Agreement. In any case, 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 30-Day Termination Notice. (Section 799.65) 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 due 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.

### **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.

You have the option of serving the 3-Day Notice and the Thirty (30) Day Termination of Tenancy Notice at the same time. If you do so, you can proceed with the eviction based upon the 30-Day Termination Notice, even if the tenant pays the sums demanded in the 3-Day Notice. If he pays within that period, then the 3-Day Notice is canceled but not the 30-Day Termination Notice if served concurrently. However, if the tenant does not pay, you will have to wait for the 30-Day Termination Notice to expire before proceeding with the unlawful detainer action.

Alternatively, you could serve the 3-Day Notice and wait to see if the tenant pays. If he does not pay, you may seek an unlawful detainer action any time after the expiration of the 3-Day Notice. If he does pay, you can then

serve a 30-Day Termination Notice and proceed with the unlawful detainer action when the 30-Day Termination Notice expires.

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 have had a problem of not receiving the rent on time and you decide that you want this tenant out of the park, then it is probably best to serve both notices together. As always, keep good written records of such efforts and, if possible, have them witnessed.

### **30 Day Termination of Tenancy Notice**

This form (Section 799.66) should be used for tenants (other than those who are late in paying rent) who are on a month-to-month tenancy and to whom you no longer wish to rent a space.

To prevent a “tenant” from becoming a “resident”, a termination of tenancy notice should be served before the last day of the sixth month of the tenant’s initial tenancy. This is because the total process from the time you serve the 30-Day Termination Notice until final eviction may take up to 90 days. If this should happen your tenant has now been in your park more than 9-months and he or she could claim that they are now a “resident.” This may require you to start all over again with “resident” eviction proceedings.

Probably the most important aspect of Thirty (30) Day Termination of Tenancy Notice under the RVPOL is that you need not have a reason for evicting the tenant from the park and you need not and should not state any reason in the Thirty (30) Termination of Tenancy Notice. (*However, it cannot be for a “bad” reason or illegal basis, such as retaliation.*) If the tenant does not leave within the thirty days after service of this notice, you **cannot** simply tow his RV from the park. At this point, you will need the services of an attorney, who should file an action for “Unlawful Detainer” in the appropriate court on your behalf. Once a judgment for possession is awarded in favor of the park by the Court, your attorney will advise and assist you in the execution of the writ of possession.

#### **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