



LANDLORD TRAINING MANUAL

KEEPING ILLEGAL ACTIVITY OUT OF RENTAL PROPERTY

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



Adapted with permission from the original *Landlord Training Program*

ACKNOWLEDGMENTS

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This manual adaptation has been guided by interviews and suggestions collected from a range of property managers, tenant advocates, attorneys, law enforcement officers, and city officials. We appreciate the input from people we interviewed. They provided essential information that we could only have obtained from those actively trying to solve problems in the community. 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 printing may be rendered obsolete by the passage of new laws or revised judicial interpretation of existing law.

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.



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.

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Preface: 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 have consistently seen improvements in the quality of their rental business. Applying the information 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 Drug Activity in Rentals

When drug 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 resulting from 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 drug 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.

Notes

Chapter 1: PREPARING THE PROPERTY

Make the environment part of the solution.



“Run-down properties tend to attract illegal drug operations. Property owners who don’t maintain their buildings perpetuate the problems.”

– Chief Steven Belcher, SCPD

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 information, see Appendix D “*Laws*”.

“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:¹

- **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 schoolyards, 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.

¹ 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 lighted, 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 drug operator 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 lighted. 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 drug 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. However, be sure to have any such changes reviewed and approved by the Planning, Fire and Police departments.

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. Remember, it is your parking lot, not a public one.

- **Locate Mailboxes in a secure and easily surveyed space.** Mailboxes can be a major target for criminals within multi-family dwellings. Mail may include checks, credit cards, and sensitive identifying information. When possible, mailboxes should be lighted 24 hours a day to reduce potential for crimes.
- **Secondary exit doors should allow exiting only.** Install “panic hardware” on the inside and no hardware on the outside. Each door should also be equipped with a heavy-duty hydraulic door closer. If the secondary exit is used as a shortcut by tenants to parking, etc. then design the door as a legitimate secondary entry that is easily visible through the use of lighting and windows. In either case, tenants should be educated in the proper use of the doors and reasons for security. And, be sure to have the Building Department review and approve any changes you make to hardware on exist doors.
- **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. All graffiti is a crime and should be reported to 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.

Chapter 2: APPLICANT SCREENING

“An ounce of prevention...”



COMPLAINTS and PROBLEMS:¹

“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.”
- various landlords and property managers

ADVICE:¹

“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.”
- various landlords and property managers

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.

¹ 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 drug dealer 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 yourself 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). California law¹ specifically adds ancestry, age,² source of income, and marital status. Further, California's Unruh 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 income³ 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

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

¹ California Civil Code, Section 51 "Unruh Civil Rights Act," Government Code Section 12955 "Rumford Act."

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

³ Note that source of income discrimination was added to Government Code Section 12955 in 1999 and is now expressly forbidden by law.

limits the ability of a landlord to deny rental on the basis of waterbed ownership.¹ 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 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.
- You could give a document to all applicants that outlines rules of the unit and warns against selling drugs 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 refuse to rent to anyone who lies to you during the application process or provides false information on the application. This is both legal and highly appropriate.

There is nothing illegal about setting fair criteria and holding all applicants to the same standards. 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.

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.

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 drug dealer who doesn't apply is one more you don't have to deal with.

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

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 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 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). If a line isn’t filled in, or the omission explained satisfactorily, we will return it to you.

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, social security number, and date of birth, credit checks cannot be run. 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.

This rule also allows you to receive an application from each roommate and not just the one with the good rental history. People involved in illegal activity may have friends 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 person.

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

This is a simple and effective rule. 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.

✓ **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 applicant 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. We reserve the right to deny your application if, after making a good faith effort, we are unable to verify your rental history.

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 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 validating past rental behavior. Asking relatives to co-sign is one useful approach to do just that.

If requiring a co-signer seems unwieldy for your type of rental, you may want to offer a different option: require additional pre-paid rent or security deposit from people who don't have a verifiable rental history. In either case (requiring co-signers or additional deposits), 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 release the co-signer or refund the additional deposit.

✓ **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. (For example: through pay stubs, employer/source contact, or tax records. If self-employed: business license, tax records, bank records, or a list of client references.) For Section 8 applicants, the amount of assistance will be considered part of your monthly income for purposes of the calculation.

The specific rent-to-income multipliers selected are up to the landlord, with this caution: In California, case law suggests that a landlord *is* allowed to set an income requirement that is as high as three times the rent. However, whether or not higher multipliers are permitted has not been decided. It is recommended, therefore, that landlords who wish to set stiffer income requirements than three times the rent, seek legal guidance before doing so. Note, as well, that some landlords screen based on what bankers call a "debt to income ratio" instead of measuring simple income amount. With this alternate method, an applicant

with a large debt burden could be denied while another applicant, with the same income, but fewer credit obligations, could be accepted.

Also, you can, and should, verify self-employment. Drug dealers 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 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 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.** You will be denied rental if you misrepresent any information on the application. If misrepresentations are found after a rental agreement is signed, your rental agreement will be terminated.

If your applicants are not honest with you, you may turn them down. It's that simple.

✓ **Criminal convictions for certain types of crimes will result in denial of your application.** You will be denied rental if, in the last X years, you have had a conviction for any type of crime that would be considered a serious threat to real property or to other residents' peaceful enjoyment of the premises, including 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.

✓ **Certain court judgments against you 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. This restriction may be waived if there is no more than one instance, the circumstances can be justified, *and* you provide a qualified co-signer on your rental agreement (or an additional deposit of X amount).

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 (overdue accounts) may result in denial of your application.** Credit records showing occasional payments within X to Y days past due will be acceptable, provided you can justify the circumstances. Records showing payments past X days are not acceptable.

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.** You will be turned down if previous landlords report significant levels of noncompliance activity such as: repeated disturbance of the neighbors' peace; prostitution, drug dealing, or drug manufacturing; 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; or failure to give proper notice when vacating the property.

Also, you will be turned down if a previous landlord would be disinclined to rent to you again for any reason pertaining to lease violating behavior of yourself, your pets, or others you allowed on the property during your tenancy.

✓ **There is an \$X application deposit.** 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, out-of-pocket screening expense, and refund any remainder. In all other cases, the deposit will be refunded.

Some landlords elect to charge applicants the direct costs of a credit check, instead of taking application deposits. Regardless, the issue is to ensure that every applicant who does apply is committed to renting the unit. That way the landlord doesn't waste time and money screening those who are not planning to rent. Also, 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 13 for more on this topic.*

✓ **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 do not introduce 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) to facilitate future enforcement, some landlords will take Polaroid photos of all tenants listed on the agreement;
- ✓ Does not permit subleasing;
- ✓ Does not allow disturbing the neighbors; and
- ✓ Forbids illegal drug use, sale, growth, or manufacture 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.

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 deposits or 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. 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 Appendix A. 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 adult¹ – *anyone* who is 18 years of age or older – who intends to reside in the unit:
 - Full name, including middle.
 - Date of birth. (you'll need it for the credit check).
 - Driver's license/I.D. number, and state.
 - Social security number (you'll need it for the credit check).
 - Name, address, and phone number of past two landlords.
 - Income/employment history for the past year. Income/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 a relative to call in case of emergency; information about pets² 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 dealing or manufacturing illegal drugs?” (You could also ask about other types of crime that would constitute a threat to the health, safety, or welfare of other tenants or neighbors – burglary, robbery, sexual assault, and child molestation are common examples.)

Of course, if they do have a conviction, they may lie about it. However, if you discover they have lied, you 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”

Some landlords charge an application fee to defray the cost of screening. Others require an earnest money deposit at the time of application to make sure the applicant is serious about renting the unit. While policies vary, most stipulate that if the applicant is accepted, but chooses not to rent the apartment,

¹ While recording such information as names, ages, and relationships 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.

² 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.

the fee or deposit will not be refunded. The value of charging a fee or collecting a deposit with the application is preventive:

- **Fees and deposits can promote “self-screening.”** People who are planning illegal activity may recognize your charging a fee as further indication of your commitment to screen carefully. Further, such a policy can discourage those who plan on filling out multiple applications, waiting to set up a drug operation with whichever landlord accepts them first.
- **Fees and deposits can save time.** You will spend less time screening people who then decide not to rent from you. Also, with a financial commitment involved, an applicant might take an extra few minutes to make sure every line on the application is filled in completely and accurately – making your verification process that much easier. Your best investment of the time you save? Spend it screening each applicant more thoroughly.

Charging an earnest money deposit, or an application fee,¹ is not for everyone. In addition, because landlords have occasionally abused applicant fee collection, it is important to make sure applicants are not taken advantage of and that your approach is consistent with California law. We recommend the following approach:

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. Remember, the major value in charging an application fee or collecting a deposit is to make sure the applicant is committed to renting the unit – 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.²
2. **Don’t keep fees or deposits if the applicant didn’t have a chance to be considered.** The most fair approach is to return fees or deposits to all honest applicants who were not given the opportunity to rent the unit. Return the money even if you incurred some screening costs on those applicants. If honest applicants are required to pay a fee even when they are not offered an apartment, the cost of just finding housing can become prohibitive. (While there are situations where, legally, fees or deposits may be kept even though the applicant did not become a tenant, we recommend returning all but the selected tenant’s funds.)

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 Appendix A. 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 qualified applicants who are willing to wait for an available unit.

¹ 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.

² See California Civil Code Section 1950.6.

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.

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:

- **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.** 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. In particular, many landlords we spoke with use this question: “If given the opportunity, would you rent to this person again?”

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 just as 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.** 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. Outcomes of court proceedings are generally public record and as such can be obtained through the local court system. Typically, police or sheriff's department's 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:¹

- **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, date of birth, social security number). Your chances for getting verifiable information are best if you have the applicant's name, date of birth, social security number, and current address.
- **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 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.

(Note that the California Department of Justice also provides a child molester identification hotline – a 900 number where the caller can find out whether or not a person has a history of certain predatory crimes. However, at press time it was not clear whether this information channel may be used legally for the screening of all applicants for rental property. A "reasonable suspicion" standard may be required for use of the information line, which would prohibit use of the hotline for general screening.)

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 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 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

¹ 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.

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.

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:¹

- **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, just say so. Or, if one look at the application indicates that the person doesn't have nearly enough income to rent the unit, don't make the applicant wait a week to find out – again, just say so.

- **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

¹ 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>.

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.
- 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 race, color, religion, sex, handicap, national origin, familial status, ancestry, age, marital status, source of income, sexual orientation 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.** Drug dealers 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.

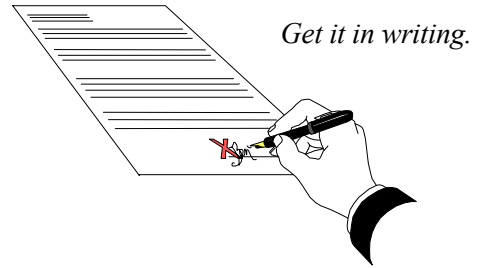
If you make it clear you are enforcing these rules only to prevent illegal activity, you may scare away potential drug dealers, but keep good renters feeling more protected. You may further calm concerns of good renters if you assure them that you will not raise the rent because an additional person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

- **Consider alternate advertising methods for your property.** Houses that are within a few miles of colleges or business parks may be desirable housing for students or professionals. Some landlords have found success in posting advertising at such locations, thus targeting people who already have a credible connection with the community.

If you are going to consider such an approach, keep in mind that fair housing guidelines apply in all aspects of managing rental housing, including advertising selection. Advertising through community colleges only may be acceptable, because such colleges typically enroll a broad cross-section of the community. But, for example, it would be inappropriate to advertise exclusively through a church newsletter or through the newsletter of a private club whose membership is not representative of the greater community. 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 race, color, religion, sex, handicap, national origin, familial status, ancestry, age, marital status, source of income, sexual orientation or other factors that are unrelated to legitimate business concerns.

Chapter 3: RENTAL AGREEMENTS



ADVICE:

“It’s important to have a comprehensive and well thought-out rental agreement – it establishes legal responsibilities of both parties and provides a basis for the landlord-tenant relationship.” - *Marty Ackerman, Property Manager, City of Santa Cruz*

The Basics

Minimize misunderstandings between you and your tenant, thus building a basis for clean and fair problem resolution down the road.

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 Appendix A. 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. (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.) A month-to-month rental agreement gives the landlord the additional option of serving a 30-day 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.

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. If you like, add this exception: unless the sublease candidate submits to the landlord a complete application and passes all screening criteria.

You must 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.”¹

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

¹ 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 felony level 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.** 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. 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 the neighbors have to do with drug crimes? It doesn’t necessarily. But we know that managers who attend to their own obligations and require tenants to meet theirs are far more effective in preventing drug 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, evictable 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. 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. 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 predated the tenancy.)

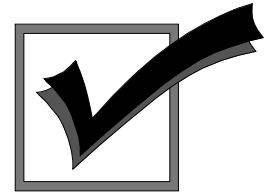
The pre-move-in inspection can reduce the likelihood of some tenants causing damage to the premises. It can also protect you against the rare case of a tenant who may attempt to block a legitimate eviction attempt by damaging the premises and then claiming that the damage was preexisting.

Key Pickup

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.

Chapter 4: ONGOING MANAGEMENT

What to do to keep the relationship working.



COMPLAINTS and PROBLEMS:

“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.” - *Rental Property Owner*

ADVICE:

“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.”

“It seems like a lot of property managers spend their time dealing with problems. If you take a proactive approach to managing your units and developing good relationships with your tenants, you have fewer brushfires to put out.”

- *Jacob Rodriguez, Code Compliance Specialist, City of Santa Cruz*

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 drug 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.¹ 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. Chapter 8 "*Crisis Resolution*" 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.

¹ 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.

LANDLORDS

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.¹
- **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 after providing reasonable notice – usually at least 24 hours in advance.
- **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.

- **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 law² specifically adds ancestry, age, marital status, source of income, 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 67, 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 include³:

- **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"),⁴ the tenant may repair it directly and deduct the cost, up to one month's rent, without fear of retaliation. However, we recommend that tenants who are planning to take such action seek legal advice before doing so.

¹ See California Civil Code 1941.3 for the specifics of the locking requirements.

² See page 6 of this manual.

³ See California Civil Code 1941.2.

⁴ See section 1942 of Civil Code

- **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 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, contractors, or tenants.
- ☒ 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 notice is typically presumed to be “reasonable” by the law. 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 at least 24 hours' notice.** If the repairs or services are routine, keep the approach friendly. Perhaps call the tenant in advance and then follow up by providing 24-hour or more notice. 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.

Notes

Chapter 5: APARTMENT WATCH/ PROMOTING COMMUNITY

How to turn an apartment complex into a community



COMPLAINTS and PROBLEMS:

“Sometimes I feel that the tenants just don’t care.” - *Apartment Manager*

ADVICE:

“Landlords and tenants need to team-up.” - *Officer Jim Howes, SCPD*

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.

Notes

Chapter 6: WARNING SIGNS OF DRUG ACTIVITY

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



COMPLAINTS and PROBLEMS:

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

ADVICE:

“Neighbors have to be aware of what’s going on and not look the other way. If more people knew what to look for, and reported it, we could be much more successful in reducing crime.” - *Lt. Tom Vlassis, SCPD*

The Drugs

While many illegal drugs are sold on the street today, 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. So far, the feared rise in ice usage has not been observed.

“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 Chapter 6 “*Warning Signs of Drug Activity*”.

- 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.

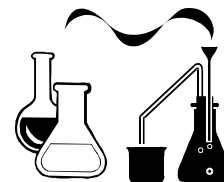
Landlords may observe:

- **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.

Notes

Chapter 7: IF YOU DISCOVER A CLANDESTINE LAB...



COMPLAINTS and PROBLEMS:

“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.”
- Rental Property Owner

ADVICE:

“Toxic chemicals used in meth labs are extremely dangerous. Some of the acids used in meth production damage your lungs if you breath the vapors and they’ll burn your skin on contact.” - Sgt. Mark Sanders, SCPD

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.

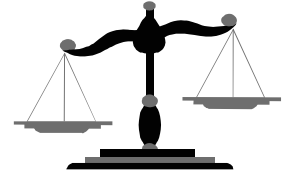
Also, there are occasions when meth cooks are forced to leave as well. For example, reports of explosions and fires are among the more common ways for local police and fire officials to discover the presence of a lab – while fighting the fire, they discover the evidence of drug lab activity.

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.

Notes

Chapter 8: CRISIS RESOLUTION

Stop the problem before it gets worse.



COMPLAINTS and PROBLEMS:¹

“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.” - *Rental Property Manager*

ADVICE:

“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.”

“Owners and property managers should get current with landlord-tenant laws.
- *Norm Daly, Housing Programs Coordinator, City of Santa Cruz*

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 drug 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

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

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 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 Appendix D “Laws” for more references, 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): 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. The notice may be served at any point during the rental period. If, after 30 days, 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,¹ 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 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 –

¹ 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.

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 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

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.

local jurisdictions with rent control place additional restrictions on the use of this notice.¹ Except where further limited by local law, a landlord may use the 3-day quit notice in one of five situations:

- The tenant has violated lease conditions and covenants that **“cannot afterward be performed.”** Such violations would be so serious that a three-day cure or quit notice is not appropriate because there is no way to “cure” or “undo” the harm done.
- 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 three-day cure or quit notice, but if the tenants take an ax to the place, or intentionally burn the kitchen down, it would qualify.
- 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 three-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

¹ 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.

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, 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 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 Appendix A 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.
- **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 an 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 notices. 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 writ typically specifies the date on which the tenant must move.
- **Go to marshal or sheriff to schedule physical removal if tenants do not move out by the date specified.** If the tenants have not moved when the date on the writ of possession arrives, take the writ of possession to the sheriff’s or marshal’s office (depending on the local jurisdiction) to start the physical removal process. 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. 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 five to eight days before the 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 or illegal 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 illegal drug 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, 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 drug dealer 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, 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 the beat officer for your area and contact the narcotics division of your local law enforcement agency. 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.

➤ **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 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 55.) 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 drug 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 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 “30-day” (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 California¹. While not possible in many Section 8 rentals or longer-term leases, a 30-day no-cause notice can be a legal, less adversarial way to solve the problem.
- **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 55. 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 drug activity, *share* the information. 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

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

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.

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 this training.** If the property is a rental, consider delivering a copy of this manual and encourage the owner to attend the Landlord Training Program.
 - **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.** 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!”¹

¹ Address: 408 13th Street, Suite 452, Oakland, 94612. Phone: (800) 404-9100, Fax: (510) 836-8959.

Notes

Chapter 9: THE ROLE OF THE POLICE

Building an effective partnership.



COMPLAINTS and PROBLEMS:

“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.” - *Rental Property Manager*

ADVICE:

“Frequently, when we raid a drug house, we find that there’s a history of violations *unrelated to the drug activity* that a landlord could have evicted the tenants for if he was committed to maintaining his property.” - *Chief Steven Belcher, SCPD*

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 authority to evict; the police don’t. The police may arrest people for criminal activity. 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.

Many landlords are surprised to discover the degree of power they have to close drug rentals and eliminate their threat 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 in a neighborhood 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, 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 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 55). 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!,¹ originally from Oakland, California teaches neighboring property owners and residents to file lawsuits when chronic crime remains unaddressed by those responsible.

¹ Safe Streets Now! can be reached at: 408 13th Street, Suite 452, Oakland, 94612. Phone: (800) 404-9100 or Fax: (510) 836-8959.

Notes

Chapter 10: THE SECTION 8 HOUSING VOUCHER PROGRAM



ADVICE:

“Owners and managers may choose or reject any Section 8 voucher holder as a tenant. We encourage owners and managers to use due diligence in screening Section 8 tenants as they should with any tenant, subsidized or not.”

“Although we cannot guarantee a Section 8 tenant will be the perfect tenant, a Section 8 tenant is just as likely to be as good a tenant as a non-subsidized tenant...” - Mary James, Housing Authority Executive Director, Santa Cruz

The term “Section 8” refers to a number of federal subsidy programs that allow people of limited means to rent housing. The tenant pays a portion of the rent, while the federal government pays the rest. The Section 8 program is 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. Have the same success rate as can be expected with private rentals.

Some Benefits

The most important benefit of participating in the Section 8 program is that, if done responsibly, it helps the entire community. Those landlords who meet their responsibilities and require Section 8 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 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 Section 8. 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 Section 8 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 Section 8 tenants must use the Public Housing Agency’s model lease.

False. New 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 Section 8 lease and/or lease addendum and the conditions under which you typically rent to non-subsidized tenants.

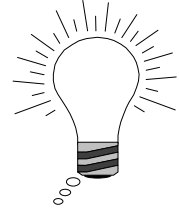
Tenants on Section 8 cannot be evicted.

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 Section 8 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 local landlord-tenant law. 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.

Section 8 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 Section 8 tenants. 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. New 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 A: RENTAL HOUSING ASSOCIATIONS

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, and various others. Basic information is provided about some, but not all, organizations.

- The **California Apartment Association** provides a range of member services, including manuals, forms, newsletters, and training for property managers and owners.

California Apartment Association

980 Ninth Street, Suite 2150
Sacramento, CA 95814
Phone: 800-967-4222
Fax: 877-999-7881
www.caanet.org

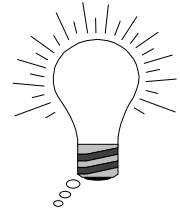
- The **Tri-County Apartment Association** is the local chapter of the California Apartment Association.

Tri-County Apartment Association

792 Meridian Way, Suite A
San Jose, CA 95126-3899
Phone (Santa Cruz): 831-459-0138
www.tcaa.org

- **California Association of Realtors**

525 South Virgil Avenue
Los Angeles, CA 90020
(213) 739-8200
www.car.org



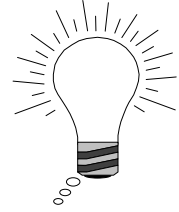
Appendix B: REFERENCE MATERIALS

Books

- *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.
- *Consumer Law Sourcebook for Small Claims Judicial Officers*, Ch.18: *Landlord-Tenant Disputes* (1996) Department of Consumer Affairs.
- *California Practice Guide: Landlord-Tenant* by Friedman et al., the Rutter Group 1999/2000.
- *California Landlord-Tenant Practice* by Moskovitz et al., California Continuing Education of the Bar 2000.

Department of Consumer Affairs Legal Guides (available at www.dca.ca.gov)

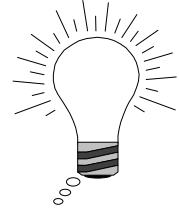
- LT-1 *Security Deposits: Tenant's Rights and Responsibilities.*
- LT-2 *How Often Can Landlords Raise Rents?*
- LT-3 *Rental Housing: Who's Responsible for What and How to Get Repairs Made.*
- LT-4 *How to Get Back Possessions You Have Left in a Rental Unit.*
- LT-5 *Options for Landlord: When Personal Property Has Been Left in the Rental Unit.*
- LT-6 *Damaged or Destroyed Residential Rental Units: A Fact Sheet for Landlords and Tenants.*
- LT-8 *Habitability and Repairs: Outline of Landlord and Tenant Responsibilities Under California Civil Code.*



Appendix C: 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.**
- **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.

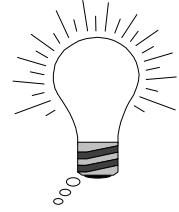


Appendix D: LAWS

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. 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: 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.



Appendix E: CITY OF SANTA CRUZ RESOURCES

➤ Neighborhood Improvement Services

Abandoned Vehicles:	831-420-6120
Graffiti Removal:.....	831-420-5580
Housing and Zoning Code Compliance:	831-420-6203 (Westside)
	831-420-6266 (Eastside)
Neighborhood Services Team:	831-420-6265

➤ Department of Planning and Community Development

Planning Department (Planning and Zoning Information):.....	831-420-5100
Building Inspection Services:.....	831-420-5120
Housing and Community Development Division:	831-420-6250

➤ Public Works and Water Department

Public Works Department:	831-420-5160
Water Department:	831-420-5200
City Utilities - Start and Stop:	831-420-5220
Garbage Green Waste:.....	831-420-5220
Sewers:	831-420-6036
Sidewalks:.....	831-420-5530
Street Cleaning:	831-420-5542
Street Maintenance:	831-420-5530
Water Mains/Fire Hydrants	831-420-5220
Water Conservation	831-420-5230

➤ **Santa Cruz Police Department**

Police Department (non-emergency): 831-420-5800

Crime Prevention, Neighborhood Watch and Beat Coordinators: 831-420-5844

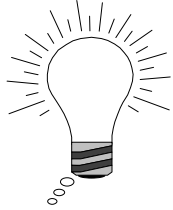
Narcotics Task Force SCCNET: 831-454-2320

Tip Line: 831-420-4995

➤ **CitySource**

Frequently asked questions about City operations and services: 831-420-5134

➤ **City of Santa Cruz Website:** www.ci.santa-cruz.ca.us



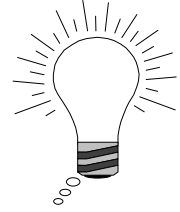
Appendix F: COUNTY and STATE RESOURCES

- **Santa Cruz County District Attorney’s Office Consumer Affairs Division**
Tenant/Landlord Hotline:..... 831-454-2128

- **California Rural Legal Assistance:..... 831-688-6535**
21 Car Street
Watsonville, CA 95076

- **Housing Authority of the County of Santa Cruz..... 831-464-0170**
2160 41st. Ave.
Capitola, CA 95010-2060
www.hacosantacruz.org

- **Department of Consumer Affairs:..... 800-952-5210**
400 R Street
Sacramento, CA 95814
www.dca.ca.gov



Appendix G: GLOSSARY

abandon/abandonment - the tenant's remedy of moving out of a rental unit that is uninhabitable and that the landlord has not repaired within a reasonable time after receiving notice of the defects from the tenant.

appeal - a request to a higher court to review a lower court's decision in a lawsuit.

Application for Waiver of Court Fees and Costs - a form that tenants may complete and give to the Clerk of Court to request permission to file court documents without paying the court filing fee.

arbitration - using a neutral third person to resolve a dispute instead of going to court. Unless the parties have agreed otherwise, the parties must follow the arbitrator's decision.

arbitrator- a neutral third person, agreed to by the parties to a dispute, who hears and decides the dispute. An arbitrator is not a judge, but the parties must follow the arbitrator's decision (the decision is said to be "binding" on the parties). (See arbitration.)

assign/assignment - an agreement between the original tenant and a new tenant by which the new tenant takes over the lease of a rental unit and become~ responsible to the landlord for everything that the original tenant was responsible for. The original tenant is still responsible to the landlord if the new tenant doesn't live up to the lease obligations. (Compare to sublease.)

California Department of Fair Employment and Housing - the state agency that investigates complaints of unlawful discrimination in housing and employment.

Claim of Right to Possession - a form that the occupants of a rental unit can fill out to temporarily stop their eviction by the sheriff after the landlord has won an unlawful detainer (eviction) lawsuit. The occupants can use this form only if the landlord did not serve a Pre-judgment Claim of Right to Possession form with the summons and complaint; the occupants were not named in the writ of possession; and the occupants have lived in the rental unit since before the unlawful detainer lawsuit was filed.

credit report - a report prepared by a credit reporting service that describes a person's credit history for the last seven years (except for bankruptcies, which are reported for 10 years). A credit report shows, for example, whether the person pays his or her bills on time, has delinquent or charged-off accounts, has been issued, and is subject to court judgments.

credit reporting agency - a business that keeps records of people's credit histories, and that reports credit history information to prospective creditors (including landlords).

default - a tenant's failure to do something that the law requires the tenant to do. For example, the law requires a tenant to pay all of the rent that is due before the tenant moves out. A tenant who moves out without paying all of the rent that is due is in default of this obligation.

default judgment - a judgment issued by the court, without a hearing, after the tenant has failed to file a response to the landlord's complaint.

Demurrer - a legal response that a tenant can file in an unlawful detainer lawsuit to test the legal sufficiency of the charges made in the landlord's complaint.

discrimination (in renting) - denying a person housing, telling a person that housing is not available (when the housing is actually available at that time), providing housing under inferior terms, harassing a person in connection with housing accommodations, or providing segregated housing because of a person's race, color, religion, sex, sexual orientation, national origin, ancestry, source of income, age, disability, whether the person is married, or whether there are children under the age of 18 in the person's household. Discrimination also can be refusal to make reasonable accommodation for a person with a disability.

escrow account - a bank account into which a tenant deposits withheld rent, to be withdrawn only when the landlord has corrected uninhabitable conditions in the rental unit or when the tenant is ordered by a court to pay withheld rent to the landlord.

eviction - a court-administered proceeding for removing a tenant from a rental unit because the tenant has violated the rental agreement or did not comply with a notice ending the tenancy (also called an "unlawful detainer" lawsuit).

eviction notice (or three-day notice) - a three-day notice that the landlord serves on the tenant when the tenant has violated the lease or rental agreement. The three-day notice usually instructs the tenant to either leave the rental unit or comply with the lease or rental agreement (for example, by paying past-due rent) within the three-day period.

fair housing organizations - city or county

organizations that help renters resolve housing discrimination problems.

federal stay - an order of a federal bankruptcy court that temporarily stops proceedings in a state court, including an eviction proceeding.

guest - a person who does not have the rights of a tenant, such as a person who stays in a transient hotel for fewer than seven days.

habitable - a rental unit that is fit for human beings to live in. A rental unit that substantially complies with building and safety code standards that materially affect tenants' health and safety is said to be "habitable." See uninhabitable and implied warranty of habitability.

holding deposit - a deposit that a tenant gives to a landlord to hold a rental unit until the tenant pays the first month's rent and the security deposit.

implied warranty of habitability - a legal rule that requires landlords to maintain their rental units in a condition fit for human beings to live in. In addition, a rental unit must substantially comply with building and housing code standards that materially affect tenants' health and safety.

item of information - information in a credit report that causes a creditor to deny credit or take other adverse action against an applicant (such as refusing to rent a rental unit to the applicant).

landlord - a business or person who owns a rental unit, and who rents or leases the rental unit to another person, called a tenant.

lease - a rental agreement, usually in writing, that establishes all the terms of the agreement and that lasts for a predetermined length of time (for example, six months or one year). Compare to periodic rental agreement.

legal aid organizations - organizations that provide free legal advice, representation, and

other legal services in noncriminal cases to economically disadvantaged persons.

lockout - when a landlord locks a tenant out of the rental unit with the intent of terminating the tenancy. Lockouts, and all other self-help eviction remedies, are illegal.

lodger - a person who lives in a room in a house where the owner lives. The owner can enter all areas occupied by the lodger, and has overall control of the house.

mediation - a process in which a neutral third person meets with the parties to a dispute in order to assist them in formulating a voluntary solution to the dispute.

Memorandum to Set Case for Trial - a court document that notifies the parties in an unlawful detainer lawsuit that the case has been set for trial. This document also states whether the plaintiff (the landlord) has requested a jury trial.

Motion to Quash Service of Summons - a legal response that a tenant can file in an unlawful detainer lawsuit if the tenant believes that the landlord did not properly serve the summons and complaint.

negligence - a person's carelessness (that is, failure to use ordinary or reasonable care) that results in injury to another person or damage to another person's property.

novation - in an assignment situation, a novation is an agreement by the landlord, the original tenant, and the new tenant that makes the new tenant (rather than the original tenant) solely responsible to the landlord.

periodic rental agreement - an oral or written rental agreement that states the length of time between rent payments - for example, a week or a month - but not the total number of weeks or months that the agreement will be in effect.

Prejudgment Claim of Right to Possession - a form that a landlord in an unlawful detainer (eviction) lawsuit can have served along with

the summons and complaint on all persons living in the rental unit who might claim to be tenants, but whose names the landlord does not know. Occupants who are not named in the unlawful detainer complaint, but who claim a right to possess the rental unit, can fill out and file this form to become parties to the unlawful detainer action.

prepaid rental listing services - businesses that sell lists of available rental units.

relief from forfeiture - an order by a court in an unlawful detainer (eviction) lawsuit that allows the losing tenant to remain in the rental unit, based on the tenant's convincing the court that he or she is able to pay all of the rent that is due, or to otherwise fully comply with the lease.

rent control ordinances - laws in some communities that limit or prohibit rent increases, or that limit the circumstances in which a tenant can be evicted.

rent withholding - the tenant's remedy of not paying some or all of the rent if the landlord does not fix defects that make the rental unit uninhabitable within a reasonable time after the landlord receives notice of the defects from the tenant.

rental agreement - an oral or written agreement between a tenant and a landlord, made before the tenant moves in, which establishes the terms of the tenancy, such as the amount of the rent and when it is due. See lease and periodic rental agreement.

rental application form - a form that a landlord may ask a tenant to fill out prior to renting that requests information about the tenant, such as the tenant's address, telephone number, employment history, credit references, and the like.

rental period - the length of time between rental payments; for example, a week or a month.

rental unit - an apartment, house, duplex, or condominium that a **landlord** rents to a **tenant** to live in.

renter's insurance - insurance protecting the tenant against property losses, such as losses from theft or fire. This insurance usually also protects the tenant against liability (legal responsibility) for claims or lawsuits filed by the landlord or by others alleging that the tenant negligently injured another person or property.

repair and deduct remedy - the tenant's remedy of deducting from future rent the amount necessary to repair defects covered by the implied warranty of habitability. The amount deducted cannot be more than one month's rent.

retaliatory eviction or action - an act by a landlord, such as raising a tenant's rent, seeking to evict a tenant, or otherwise punishing a tenant because the tenant has used the repair and deduct remedy or the rent withholding remedy, or has asserted other tenant rights.

security deposit - a deposit or a fee that the landlord requires the tenant to pay at the beginning of the tenancy to protect the landlord if the tenant defaults, for example, by moving out owing rent or leaving the unit damaged or less clean than when the tenant moved in.

serve/service - legal requirements and procedures that seek to assure that the person to whom a legal notice is directed actually receives it.

sublease - a separate rental agreement between the original tenant and a new tenant to whom the original tenant rents all or part of the rental unit. The new tenant is called a "subtenant." The agreement between the original tenant and the landlord remains in force, and the original tenant continues to be responsible for paying the rent to the landlord and for other tenant obligations. (Compare to assignment.)

subpoena - an order from the court that requires the recipient to appear as a witness or provide evidence in a court proceeding.

subtenant- see sublease.

tenancy - the tenant's exclusive right, created by a rental agreement between the landlord and the tenant, to use and possess the landlord's rental unit.

tenant - a person who rents or leases a rental unit from a landlord. The tenant obtains the right to the exclusive use and possession of the rental unit during the lease or rental period.

tenant screening service - a business that collects and sells information on tenants, such as whether they pay their rent on time and whether they have been defendants in unlawful detainer lawsuits.

three-day notice - see eviction notice.

thirty-day notice - a written notice from a landlord to a tenant telling the tenant that the tenancy will end in 30 days. A thirty-day notice usually does not have to state the landlord's reason for ending the tenancy.

uninhabitable- a rental unit which has such serious problems or defects that the tenant's health or safety is affected is "uninhabitable." A rental unit may be uninhabitable if it is not fit for human beings to live in, or if it fails to substantially comply with building and safety code standards that materially affect tenants' health and safety. (Compare to habitable.)

unlawful detainer lawsuit - a lawsuit that a landlord must file and win before he or she can evict a tenant (also called an "eviction" lawsuit).

U.S. Department of Housing and Urban Development - the federal agency that enforces the federal fair housing law, which prohibits discrimination based on sex, race, religion, national or ethnic origin, familial status, or mental handicap.

waive - to sign a written document (a waiver") giving up a right, claim, privilege, etc. In order for a waiver to be effective, the person giving the waiver must do so knowingly, and must

know the right, claim, privilege, etc. that he or she is giving up.

writ of possession - a document issued by the court after the landlord wins an unlawful detainer (eviction) lawsuit. The writ of possession is served on the tenant by the sheriff. The writ informs the tenant that the tenant must leave the rental unit by the end of five days, or the sheriff will forcibly remove the tenant.

Notes