

WEBINAR:
Avoiding Legal Pitfalls in California Evictions



Ashlee Gonzales, Esq.
Junior Partner & Real Estate Attorney

Adam Pedersen, Esq.
Senior Partner & Real Estate Attorney






DISCLAIMER

You agree, by participating in this webinar, that the information presented does not constitute legal advice and is being presented for informational purposes only. You agree that no attorney-client relationship is established or assumed by participating in this webinar and that the information or suggestions presented in this broad overview may not apply to your specific circumstances.

POLL QUESTION:

How many units do you manage?

POLL QUESTION:

On average, how many tenants do you have to evict in a year?



POLL QUESTION:

What is the most common reason you need to evict a tenant?





THE EVICTION PROCESS



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CAUSES OF EVICTION

Reasons You Can Evict

- Failure to Pay Rent
- Breach of Contract
 - Illegal Use of Property – Airbnb, Drug Use, Etc.
 - Illegal Occupants
- Other
 - Expiration of Lease



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HOW APARTMENT OWNERS DISCOVER ISSUES

- **Limited Right of Entry**
 - Follow Civil Code §1954 closely
- **Methods of Discovery**
 - Talking to Neighbors
 - Code Enforcement
 - Police Reports



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WARNING!

NO SELF HELP ALLOWED

- Not Allowed to Change Locks
- Not Allowed to Turn Off Utilities

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EVICITION PROCESS

Requirement to Give Notice

- 3-Day Notice to Perform or Quit
- 3-Day Notice to Quit
- 30/60-Day Notice of Termination
 - Depends on length of lease and lease verbiage
 - For certain types of notice, must give 'abandoned property' language in notice (Civil Code §1946.1)



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EVICITION PROCESS

Service Requirements

- Personal, Substitute, Post & Mail Service options
- Serve ALL Tenants
- Document Process
- Hire Process Server



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EVICITION PROCESS

File Lawsuit

- Only After Time to Cure has Expired
- Summons, Complaint, Civil Case Coversheet, Prejudgment Claim to Right of Possession
- Service of Unlawful Detainer Action
- 5-15 Days to Respond – Depending on Type of Service



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EVICTON PROCESS

Litigation

- Default Judgments
- Settlement Conference
- Discovery and Motions
- Trial

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ANTICIPATING & AVOIDING
POTENTIAL PITFALLS

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TECHNICAL PITFALLS

Most Common Pitfalls

- Improper Notice
- Filing Suit Too Early
- Accepting Rent from Tenant
- Service Issues Re: Unlawful Detainer Complaint and Notices

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TECHNICAL PITFALLS

Improper Notice

- **Specify Violation and Time to Cure**
 - Varies based on breach (i.e. 3,30, and 60 day notices)
- **Must Wait Until Required Cure Period Ends**
- **Invalid Notice is a Complete Defense**



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TECHNICAL PITFALLS

Filing Suit Too Early

- **Occurs when landlord files unlawful detainer complaint prior to expiration of notice**
 - Be mindful of holidays and weekends → extend to next court day
- **To Cure, Have to Restart Process**
- **Filing Suit Too Early is a Complete Defense**



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TECHNICAL PITFALLS

Accepting Rent

- **Waiver**
 - After expiration of notice period, accepting any rent from tenant acts as a waiver. Also can create periodic tenancy
- **Notice is considered "cured"**
- **Acceptance of rent by landlord during notice period is a complete defense for the tenant**



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TECHNICAL PITFALLS

Service Issues

- Serve All Tenants
- Personal, Substituted, Notice and Acknowledgment, and Posting and Mailing
 - All effective, but each gives tenant different amount of time to cure
- Judgment may be Set Aside for Service Issues
 - Landlord forced to start entire process over

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ADDRESSING COMMON
TENANT DEFENSES

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TENANT DEFENSES TO AN EVICTION

Common Tenant Defenses

- Illegal Unit (Unpermitted Unit)
- Discrimination
- Habitability
- Delay

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TENANT DEFENSES TO AN EVICTION

Tenant Defenses

- **Illegal Unit (Unpermitted Unit)**
 - Tenant has same rights as tenant in legal unit
 - Including Rent Control in some cities
 - In some areas, tenant may be able to recover ALL rent paid in an illegal unit
 - LA Court of Appeal Case-tenant not responsible for rent increases, still required to pay base rent



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TENANT DEFENSES TO AN EVICTION

Tenant Defenses

- **Discrimination**
 - Landlord cannot discriminate based on family size, race, gender, etc.
 - Most Common: Familial Status and Gender
 - Common Situations
 - Family has a baby, landlord moves to evict based on it
 - Unfair terms based on race/gender



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TENANT DEFENSES TO AN EVICTION

Tenant Defenses

- **Habitability- Retaliatory Eviction**
 - Eviction considered retaliatory if within 6 months of tenant doing any of the following:
 - Tenant exercised legal right (i.e. Repair and Deduct Remedy)
 - Complained about a problem in the unit
 - Causes a public entity to inspect unit and/or issue citation
 - Landlord bears burden of proof



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TENANT DEFENSES TO AN EVICTION

Tenant Defenses

- Delay
 - In some instances, tenant may be able to delay eviction by filing bankruptcy
 - Typical delay: 1 to 2 months

Eviction matter is stayed until bankruptcy over



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HOSTILE TENANTS

How to Handle

- Hire property manager to work as intermediary
- Tread lightly, courts tenant friendly
- Only contact when necessary, make sure you perform eviction 'by the book'
- Consider buyout to provide incentive, however be mindful of City/County buyout requirements




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BEFORE & AFTER:
TRIAL PROCEEDINGS







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PREPARING FOR EVICTION PROCEEDINGS

Lawsuit & No Answer

- Request for Entry of Default
- Request for Default Judgment
- Obtain Writ of Possession
- Obtain Money Judgment if Applicable
 - Only obtained *after* tenant moves out



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PREPARING FOR EVICTION PROCEEDINGS

Lawsuit & Answer

- File Request for Trial ASAP After Tenant Answers
 - Trial set within 20 days after filing (CCP §1170.5(a))
- Jury Trial or Bench Trial
- Discovery and Motions
- Settlement Conference
- Judgment



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POST-JUDGMENT ENFORCEMENT

Possession

- Obtain Writ of Possession
- Submit to Sheriff to Execute – No Self-Help

Damages

- After Tenant Vacates, Seek Damages



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ABANDONED PROPERTY

Handling Property

- Inventory & Store Property
- Send Notice to Tenant of Abandoned Property
 - Civil Code §1951.3

Liquidating Property

- Determine Worth of Property
 - If **LESS THAN \$700**, dispose of property
 - If **MORE THAN \$700**, sell the property

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QUESTIONS?



Ashlee Gonzales, Esq.
Junior Partner & Real Estate Attorney
(650) 327-2900 x22
ashlee@brewerfirm.com



Adam Pedersen, Esq.
Senior Partner & Real Estate Attorney
(650) 327-2900 x20
adam@brewerfirm.com

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