

EVICCTIONS AND RCFES

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The proper procedure for evicting a resident from an assisted living community has always been somewhat confusing, in large part because of a lack of legal guidelines. Thus, we have used provisions from Title 22, §87589, cobbled together with the California Code of Civil Procedure and the Civil Code which address termination of tenancies. But removing a resident from an RCFE is very much different from evicting a tenant from an apartment building.

In our experience, very very few resident evictions are actually tried to the Court--let alone become the subject of published appeals. This means that, as lawyers, we have had little guidance from the Courts as to how the process should work.

The Legislature has decided to step into this apparent breach with the enactment of Health & Safety Code §1569.683 which becomes effective January 1, 2010 and which will standardize the Notices of Termination (also referred to as Notices to Quit) which begin the eviction process.

This Update summarizes these new rules. But first, [a quick primer on the eviction process itself](#):

REMOVING A RESIDENT

The relationship between a community and a resident is governed by California's statutes and regulations and by the Residency Agreement signed by the resident or his or her representative on admission. It is no surprise that the process of terminating that relationship is governed by the same provisions.

An RCFE may terminate the Residency Agreement of a resident only for the specific reasons set forth in Title 22, §87224.

A written Notice of Termination begins the process. Generally, a 30-day Notice is used, although in unusual situations with approval from the Department of Social Services, a 3-day Notice can be given. Previous to enactment of Health & Safety Code §1569.683, a Notice of Termination need only state "the reasons relied upon for the eviction with specific facts to permit determination of the date, place, witnesses, and circumstances concerning those reasons." Title 22, §87224(d).

Under the Code of Civil Procedure, the Notice must to be served on the resident who then has 30 days to leave the community. If he or she does not leave, the community may initiate an unlawful detainer action in the Superior Court of

the county in which the community is located. An unlawful detainer action seeks possession of the apartment or unit which the resident occupies, seeks a judicial determination that the Residency Agreement has been terminated, and may seek unpaid fees as well as damages for each day the resident remains in the community after the 30 days has expired.

The unlawful detainer process generally moves quickly in California. The resident has 5 days to respond to the unlawful detainer complaint once he or she has been served with it. After the response is received, the community may request a trial date from the Court. The Court must set a date within 20 days after receiving the request from the RCFE. Either party may demand a jury.

If the community wins at trial and the resident still remains, the community can have the resident physically removed by the Sheriff of the County in which the community is located. Obviously, this is not an action any RCFE would take lightly. However, it is our experience that a very large number of residents voluntarily leave after service of the Notice of Termination and the majority of those who do not, will voluntarily leave after service of the unlawful detainer complaint and before an actual trial date. Of course, there are always exceptions....which brings us back to the Notice of Termination.

In California, an unlawful detainer action is a summary proceeding, meaning that it is designed to very quickly take away a tenant's rights to possession which is considered an important and significant right. Thus, the Courts will construe any errors in the Notice of Termination in favor of the resident and against the community. An error in calculating fees owed, in citing language from the Residency Agreement, or any ambiguity in the Notice itself (e.g., is the resident being asked to leave or only to correct his or her behavior?) may result in a Court dismissing the action based on an erroneous notice and the community will need to literally start the process all over with a correct 30-day Notice and a potential claim by the resident for wrongful eviction. For these reasons, RCFEs should consult with their legal counsel as to the preparation and service of Notices of Termination because the consequences of even a slight error are drastic.

NEW LAW:

Health & Safety Code §1569.683 adds to the existing requirements of Title 22 and the Health & Safety Code. The stated purpose of the new Code section is "to ensure

that eviction and transfer notices used by [RCFEs] do not violate residents' rights." It also provides that violation of these provisions, as part of the California Residential Care Facilities for the Elderly Act, is a crime.

Below is a listing of the new provisions along with our comments:

1569.683(a) "In addition to complying with other applicable regulations, a licensee of a residential care facility for the elderly who sends a notice of eviction to a resident shall set forth in the notice to quit the reasons relied upon for the eviction, with specific facts to permit determination of the date, place, witnesses, and circumstances concerning those reasons." This language essentially mirrors the existing Title 22 language.

In addition, the notice to quit shall include all of the following:

(1) The effective date of the eviction. This is somewhat confusing as "eviction" is generally defined as "the act or process of legally dispossessing a person or land or rental property." We assume what the Legislature intended is the date of termination, i.e., the expiration of the 30-day (or 3-day) period. To be safe, stating the dates that the Notice is served and the end of the Notice period should satisfy this requirement.

(2) Resources available to assist in identifying alternative housing and care options, including public and private referral services and case management organizations. Many of our clients already provide this type of assistance but this statute formalizes the requirement to do so and to do so within the Notice of Termination itself.

(3) Information about the resident's right to file a complaint with the department regarding the eviction, with the name, address, and telephone number of the nearest office of community care licensing and the State Ombudsman. Again, a good practice that has now been mandated.

(4) The following statement: "In order to evict a resident who remains in the facility after the effective date of the eviction, the residential care facility for the elderly must file an unlawful detainer action in superior court and receive a written judgment signed by a judge. If the facility pursues the unlawful detainer action, you must be served with a summons and complaint. You have the right to contest the eviction in writing and through a hearing." Exact repetition of this language is strongly recommended. In addition, you may want to consider including the following language, which is an accurate statement of the law and provides the resident with additional information about the process: "If you fail to deliver the premises to the Community's management within thirty (30) days, legal proceedings will be commenced against you to (1) declare a forfeiture of your Agreement, (2) recover possession of the Premises, (3) recover damages for each day that you occupy the Premises after the period covered by this Notice, and (4) recover all other damages and costs to the extent allowed by law."

(b) The licensee, in addition to either serving a 30-day notice, or seeking approval from the department and serving three days notice, on the resident, shall notify, or mail a copy of the notice to quit to, the resident's responsible person. Another good practice now mandated. We recommend mailing or otherwise delivering a copy of the notice in writing.

CONCLUSION

The Legislature's guidance makes proper preparation of a Notice of Termination even more important than ever. The provisions of Health & Safety Code §1569.683 mandate certain language and provisions that must appear in the Notice. Failure to comply can result not only in a failed attempt to evict a resident but in actual criminal sanctions, making an understanding of what is required essential.

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