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*RESIDENTIAL  
EVICTIONS  
BEST  
PRACTICES*

GIVING YOURSELF THE BEST  
CHANCE OF SUCCESS IF YOU  
MUST FILE AN EVICTION

PROCEDURES  
Ideals  
Knowledge  
SUCCESS  
TECHNIQUE  
STANDARD  
Measurement  
Optimal  
Solutions  
CUSTOMERS  
Quality  
VALUES  
Analysis  
DEVELOPMENT  
Solutions  
VISION  
Potential  
SKILLS  
People  
METHODOLOGY  
Performance  
Strategy  
Result  
ETHICS  
Experience  
Ideals

**BEST  
PRACTICES**

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INTRODUCTION

About  
Kimball, Tirey &  
St. John LLP

Representing landlords  
for over 45 years

Statewide  
representation

Areas of practice

Website  
www.kts-law.com

Articles

Legal Alerts

Live and online  
trainings

Monthly  
webinars

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*LEGAL DISCLAIMER*

1

This seminar is for general information purposes only. It is not intended as legal advice.

2

Our legal alerts are provided on selected topics and should not be relied upon as a complete report of all new changes of local, state, and federal laws affecting property owners and managers.

3

Attendance at this training does not create an attorney-client relationship with the speaker or the firm they represent. For legal advice on specific issues, please contact an experienced KTS attorney.

4

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### DOCUMENTATION

Document everything

Keep a timeline of requests for repairs and repairs made


Take pics of the damage and also the completed repair and keep receipts

Keep a timeline and notes.

Maintain a resident file with all correspondence, whether texts, emails, or a conversation log

Send confirming letters

Have incident reports



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### CAUTIONS ON DOCUMENTATION


All communication and documentation should be professional

Discoverable which means other may see it

Assume that your text, email, or other communication will be attached to a lawsuit

Ask yourself how you would look if someone read your internal communication

Avoid name calling, insults in your communication



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### RENT CAPS



Make sure your increases do not violate state or local laws on caps

Tenant Protection Act is 5% +CPI not to exceed 10%

Local laws may have additional limits

Make sure the notice of increase is valid – some local laws have additional requirements for the notice

30 days notice for increase 10% or less in last 12 months

90 days notice for increases over 10% cumulative in last 12 months

Add 5 days for mailing in California add 10 for mailing outside California

Always remember price gouging protections

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### WHAT IS A PAPER TRAIL

What is a paper trail?

- Emails
- Incident reports
- Police reports
- Lease violations
- Notices
- Any other documentation to prove what took place



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### WHAT IS A PAPER TRAIL

Why do I need a paper trail?

- More credible than verbal reports
- Evidentiary & probative value
- Refreshes your memory
- Issues documented when they occurred seen as more accurate
- Judges want to see a history of violations and attempts to work with the resident



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### LEASE VIOLATIONS

When should I send out a lease violation?

- First violation?
- Verbal warning OK?
- Confirmation letter
  - Reference earlier conversation
  - Include the violation that occurred and when
- Acknowledge that it was addressed already



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### LEASE VIOLATIONS- *DOS AND DON'TS*

DO: Use your company letterhead


DONT: Send a casual email


DO: Address it to all leaseholders

DONT: Use casual language

DO: Quote the lease provision or house rule that was violated

DO: Include details about how the lease was violated

DOs

DON'Ts

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### LEASE VIOLATIONS - *SAMPLE*

Dear Mr. Jones,

On March 1, 2021, a member of the staff saw you smoking a cigarette on your balcony at approximately 10:AM.

Section 7 (SMOKE-FREE) of your lease agreement states, "Resident agrees to refrain from smoking..."

For the duration of your tenancy, you must permanently refrain from smoking anywhere in the community, including inside your unit or on the balcony.

Additional violations will result in a legal notice being served upon you which could jeopardize your tenancy.

Sincerely,

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### TYPES OF NOTICES


Resident's Notice of Intent to Vacate

30 or 60-Day Notice to Terminate Tenancy – not permitted until 7/1/21

Pay Rent or Quit

Notice to Perform Covenant or Quit

3-Day Notice to Quit



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### AVOIDING COMMON ERRORS

Check the details!

Small mistakes can be fatal

- Overstating the amount of rent due
- Incorrect address, name, or spelling



Oops! I hope nobody notices!

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### RESIDENT'S NOTICE OF INTENT TO VACATE


Month-to-Month tenants

Must be in writing

- Move-out date specified in notice

Signed by all adults

- What if not all residents sign?
- What about extensions?



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### RESIDENT'S NOTICE OF INTENT TO VACATE

CAUTIONS:

- Accepting rent
- Resident won't vacate
- Resident rescinds the notice



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# RESIDENT'S NOTICE OF INTENT TO VACATE

Landlord should send follow-up letter:

- Acknowledge receipt
- Offer pre-move-out inspection
- State the rent amount for final month
  - $2,000 \div 30 = \$66.666666$  (\$66.66)
- Get forwarding address for deposit



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# LANDLORD'S NOTICES TO TENANT

TYPES OF NOTICES:

Tax Credit? Bond? Other affordable?

- Follow state law and tax credit rules

Section 8 Voucher?

- Follow state law and Housing Choice Voucher rules

Project Based Section 8?

- Follow HUD regs
- All affordable programs: must also comply with the lease language
- All affordable notices must state good cause

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# 30-DAY OR 60-DAY NOTICE- TAX CREDIT/AFFORDABLE


Usually for month-to-month tenancy –

What about a 3-day quit?

- Most serious cases (discussed later)

Must state good cause in the notice

- Cite lease provisions violated
- Cite facts to show violations



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**30-DAY NOTICE- PROJECT BASED  
SECTION 8**

Must state good cause /  
material non-compliance

Cite lease provisions  
violated

State the facts in detail



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**30-DAY NOTICE- PROJECT BASED  
SECTION 8, CON'T.**

Other notice requirements:

- Expiration date
- 10-day language
- Right to request accommodations
  - if you are a person with disabilities, you have the right to request reasonable accommodations to participate in the hearing process
- Right to defend the action in court
- (See Section 23 of the HUD model lease)

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**30/60 DAY NOTICE: ABANDONED PROPERTY  
LANGUAGE REQUIRED**

**Required Language:** Tenants have rights to reclaim abandoned personal property under certain conditions, they may or may not be able to reclaim the property without incurring additional costs and that the sooner they act to reclaim the property, the less the costs are likely to be.

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3-DAY PAY OR QUIT NOTICE:

Requirements:

- Name of all adults
- No co-signers
- No tenants who have left
- Full address
- Amount of rent owed
- Name, address, phone, days, hours when office is open
- Mail only?
- What about payment via electronic transfer?

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3-DAY PAY OR QUIT NOTICE,  
CON'T

What about partial payments?

What about the dates?

What NOT to include in the notice

- Late fees
- Utilities
- Garage Rent?



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3-DAY PAY OR QUIT NOTICE,  
CON'T

EXAMPLE:  
WITHIN THREE (3) DAYS, after the service on you of this notice, you are hereby required to pay the delinquent rent of the premises herein after described, of which you now hold possession, as follows:  
**\$ 1,200 FROM:** Jan. 1, 2020      **TO :** Jan. 31, 2020  
**\$ 1,200 FROM:** Feb. 1, 2020      **TO:** Feb. 28, 2020  
**Total: \$2,400**  
**OR:**  
**\$2,400 FROM:** Jan. 1, 2020      **TO:** Feb. 28, 2020

**NOT THIS:**  
**Total: \$2,400 FROM:** Feb. 1, 2020      **TO:** Feb. 28, 2020

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10-DAY PAY OR QUIT NOTICE

Expiration date

10-day language

- (Right to meet with landlord to discuss proposed termination of tenancy)

Right to defend the action in court

Accommodation language

- If you are a person with disabilities, you have the right to request reasonable accommodations to participate in the hearing process.

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3-DAY NOTICE TO PERFORM COVENANT OR QUIT

Breach of Lease Provision

Can Be Cured

Requirements:

- Quote the lease provision
- Include the facts on breach
- State how to cure
- Payment info if asking for money

LEASE CONTRACT

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3-DAY NOTICE TO PERFORM COVENANT OR QUIT

1) Section XXX of your lease states, " QUOTE THE LEASE PROVISION IN FULL "

2) PUT FACTS HERE ABOUT HOW THEY ARE BREACHING THEIR LEASE Ex. You have an unauthorized dog in your unit. Management has seen you walking a dog on the premises for two weeks and taking the dog into your unit. On March 3, 2021, Management sent you a letter, telling you to remove the dog. Since then, Management continues to see the dog on the premises everyday.

3) TELL THE RESIDENT HOW TO COMPLY: YOU MUST PERMANENTLY COMPLY WITH THE ABOVE COVENANT WITHIN THE NEXT THREE (3) DAYS BY: REMOVING ALL UNAUTHORIZED ANIMALS FROM YOUR UNIT

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### 10-DAY NOTICE TO PERFORM COVENANT OR QUIT

- Expiration date
- 10-day language
  - (right to meet with LL to discuss proposed termination of tenancy)
- Right to defend the action in court
- Accommodation language
  - if you are a person with disabilities, you have the right to request reasonable accommodations to participate in the hearing process.

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### 3-DAY QUIT NOTICE-TAX CREDIT

Illegal activity

Nuisance

Waste

- Only most extreme circumstances
- High burden of proof in court because it is non-cureable
- Don't accept rent after serving the notice

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### 3-DAY QUIT NOTICE-TAX CREDIT

Notice Requirements

Specific facts included

Dates, times, details

Can't bring it up at trial if not alleged in the notice

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### COMMON LOCAL ORDINANCE REQUIREMENTS

Local ordinances often have specific requirements for compliance and any failure to comply may be raised as an affirmative defense. Not every jurisdiction has these rules, so it is important to know your local rules. Some of these may include but are not limited to the following:

Registration	Payment of fees	Posted notices of rights	Service of registration certificate	Proper notification of increases
Uploading Notice to city website	Anti-harassment ordinances	Number of bedrooms on notice	Wait for rent arrears to be 1-month fair market rent	Interest on security deposits

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### WHAT ABOUT REASONABLE ACCOMMODATIONS?

Accommodations can be requested up until time of lockout and in some cases after lockout

- More time to move
- Time to collect belongings after lockout
- Opportunity to come into compliance

Requesting a Reasonable ACCOMMODATION



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### SERVICE OF NOTICES

Personal service

- Serve one adult resident
- Must attempt personal serve

Substitute service

- Hand a copy to non-resident adult and mail by regular mail



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SERVICE OF NOTICES



**Post and Mail**

- Knock to see if anyone is home
- Post a copy and mail a copy regular mail
- How do I "post"?
- Conspicuous place
- Place of employment
- Check lease language

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SERVICE OF NOTICES

Section 8 Voucher tenant

- Copy of notice to Housing Authority (Certified Mail, RRR)
- VAWA notices required (all section 8)
  - Notice of tenants' rights
  - Certification



**Don't Forget: Fill out Proof of Service!**

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CALCULATING EXPIRATION DATES

Start counting the day after the notice is served

Notices can't expire on weekend or holiday

Weekends and holidays are NOT counted for cureable notices



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GOING TO COURT

Contested  
case

- Tenant files answer
- Trial appearance
  - Bring the file
  - Bring witnesses
  - Staff
  - Residents



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COMMON DEFENSES IN EVICTIONS

Habitability

Failure to comply with required disclosures

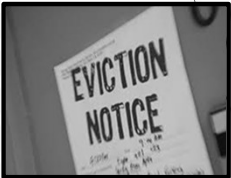
Invalid notice

Improper rent increase

Civil Code 1962 – notice of change of ownership/management

Failure to comply with local ordinance

Retaliation/harassment



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SECURITY DEPOSIT INFORMATION

Maximum is 1 month deposit

- Exception may permit a 2-month deposit
- Exception is a natural person who owns no more than 2 parcels and no more than 4 units
- Service members will only ever be charged a maximum of 1 month regardless of the exception above

Any money demanded and accepted prior to July 1, 2024, is fine to retain and hold.

- Assuming the amount was legal at the time it was obtained
- 2 months for unfurnished unit or 3 months for a furnished unit

Deposit will include all money taken at the inception of tenancy

- Includes deposit, last month rent, clicker, key, pet, conditional

No such thing as non-refundable deposit

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