

## MENTAL HEALTH ADVOCACY PROJECT

*Asistencia Legal Para La Salud Mental*

*Law Foundation of Silicon Valley*

111 West St. John Street, Suite 315

San Jose, California 95113

(800) 248-MHAP • Fax (408) 293-0106 • Telephone (408) 294-9730

### THE EVICTION PROCESS

#### **Who does the eviction process apply to?**

Almost everyone who pays rent in order to live somewhere is considered a tenant and can only be evicted according to the process described in this handout. There are only two exceptions: (1) a person who lives in a motel or hotel for less than 30 days; and (2) a person who is the only lodger in a house where the landlord also lives.

#### **How does the eviction process begin?**

Before you can be evicted, your landlord must give you one of the following notices:

- **90-Day Notice:** If you are renting using a Section 8 voucher and you have a month-to-month tenancy, your landlord must give you a 90-Day Notice to terminate your tenancy and end the landlord's participation in the Section 8 program. No cause needs to be stated on this notice. If you live in a property covered by San Jose's Rent Stabilization Ordinance and you have lived in your unit for one or more years, then your landlord must give you either a 90-Day Notice or a 60-Day Notice with an Offer to Arbitrate, as explained below.
- **60-Day Notice with Offer to Arbitrate:** If you live in a property covered by San Jose's Rent Stabilization Ordinance and you have lived in your unit for one or more years, then your landlord must give you either a 90-Day Notice (as explained above) or a 60-Day Notice with an Offer to Arbitrate. See MHAP's "San Jose Rent Stabilization Ordinance" handout.
- **60-Day Notice:** If you have a month-to-month tenancy, do not live in a property covered by San Jose's Rent Stabilization Ordinance, and have lived in your unit for one year or more, your landlord can evict you for no reason with a 60-Day Notice.
- **30-Day Notice:** If you have a month-to-month tenancy and you have lived in your unit for less than one year, private landlords can evict you for no reason with a 30-Day Notice. Tenants in public or subsidized housing, in licensed board and care homes, or who have a lease may be entitled to a "good cause" notice (read more below).
- **3-Day Notice to Pay Rent or Quit:** If you did not pay your rent, the landlord can give you a notice allowing you three days to pay or leave. The landlord does not have to accept the rent if you pay after the 3 days (it is always a good idea to offer it). Even if the landlord does not accept the rent, save it or you will lose the eviction.
- **3-Day Notice for a Lease Violation:** A landlord can give you a 3-day notice when you have done something that you promised not to do in your lease or rental agreement, such as having pets or guests without permission or disturbing your neighbors. Usually, the landlord must give you a chance to fix the problem within 3

days. The exceptions are if you did something illegal on the property, if your behavior threatens people's health or safety, or if you sublet without permission.

- **Good Cause Notice:** Tenants in public or subsidized housing (who often pay rent based on a percentage of their income) and tenants in licensed board and care homes are entitled to "good cause notice," which states what the tenant did to justify the eviction. If you have a lease and the lease has not ended yet, the landlord has to have a reason to evict you. Section 8 tenants should check with a lawyer about whether they should have received a good cause notice.

### **What happens after the notice has expired?**

The landlord cannot just change the locks. He must file an eviction case in court.

**Summons & Complaint:** Once your notice has expired, the landlord can file a court eviction case, called an unlawful detainer (or "UD"). The fact that a landlord has filed a UD can be discovered by future landlords. Once you receive the court papers (the Summons & Complaint), you have only FIVE DAYS (including weekends) to respond. If you do not respond, you automatically lose the court case.

**Answer:** The way that you respond to a Summons & Complaint is by filing an Answer at the Superior Court within 5 days. An Answer is a court paper that states that you want to fight the eviction and lists your defenses (read MHAP's handout "Fighting An Eviction"). You must either pay \$122 (per defendant) to the court or, if you cannot afford it, file a Fee Waiver. Talk to a MHAP lawyer right away to help you fill out your Answer and Waiver. Ask your lawyer if there is anything else you need to do (such as file motions or discovery). Look for witnesses and evidence in your favor.

**Settlement:** Often, before you have a trial, you and the landlord's attorney will have a chance to make an agreement called a settlement. If you agree to a settlement, you give up your right to a trial and to a decision by a judge.

**Trial:** A trial date will usually be scheduled for 2-3 weeks after you file your Answer. The trial is your opportunity to testify about your defenses, to bring witnesses and evidence, and to cross-examine the landlord's witnesses. A judge or jury may decide the case.

**After the Trial:** If you win the trial, you can continue living in your apartment, if you can pay all the back rent that you owe. If you lose, the landlord will get a judgment against you to get possession of the apartment and for back rent, his or her court costs, and his or her attorneys' fees. (If you receive government benefits, the landlord will not be able to collect the money you owe from your benefits.) The Sheriff will post a notice on your door, giving you 5 days to leave. If you have not left by the date on the notice, the Sheriff will physically remove you and change the locks.

**Stay:** If the landlord wins and you have not left yet, you can ask the judge for a "hardship stay" of up to 40 days. You have to be able to pay rent (in cash or money order) for the whole stay period at the time that you are asking for it. The judge will decide whether to give you a stay based on whether you have been looking for other housing and the hardships that you face. MHAP can help you apply for a stay.

**Call MHAP as soon as you get any notice:** (800) 248-MHAP or (408) 294-9730.