

How to Handle Holdover Occupants of Trust and Estate Property, Eviction Proceedings, and Other Related Issues

CALIFORNIA LAWYERS ASSOCIATION

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Agenda

This program will examine various issues and possible solutions for dealing with holdover occupants of trust or estate property including unlawful detainer actions and probate court proceedings.

Topics will include how property owners navigate working with or removing holdover occupants of trust or estate property, cross over issues between landlord tenant rights and trusts and estates, the right to enter a tenant's unit, repairs, rental agreements, rent collection, enforcement of lease terms, terminating a tenancy, insurance, and comments on practical tips.

Introduction – Trusts and Estates

- Property can be held by:
  - an individual (or jointly)
  - a corporate entity
  - a Trustee
  - a personal representative of an Estate
  - a Conservator of an Estate
- Holdover occupant issues can arise in any of these ownership scenarios

Introduction – Trusts and Estates

- Make sure title is proper to correct any ownership/standing issues
  - Chain of title
  - Affidavits of death
  - Successor trustees?
  - Personal representatives?
  - Conservators?

Trusts - Introduction

- Trustees manage trust property for the benefit of the beneficiaries
- Duty to productively hold (Probate Code, § 16007), then distribute
- Common scenarios
  - Parent/Settlor dies, child was caring for parent and living in the house.
    - Child is a beneficiary
    - Child is a trustee
    - Property needs to be sold for trust administration/distribution
  - Trustee managing trust property has problematic renter.

Trusts - Introduction

- Trustee Powers
- Terms of the Trust and Probate Code
- Power to sell property (Prob. Code, § 16226.)
- Power to lease property (Prob. Code, § 16231.)
- Power to litigate (Prob. Code, § 16249.)
- No distinction between primary residence versus other properties as with conservatorships, discussed later.

Trusts – Trustees and Self-Dealing

- Trustees as holdover occupants
  - Self-dealing not allowed unless authorized by trust terms
  - Trustee may not live in trust property rent-free.
  - Probate Code section 16004
    - “The trustee has a duty not to use or deal with trust property for the trustee’s own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.”
  - Probate Code section 16007
    - “The trustee has a duty to make trust property productive under the circumstances and in furtherance of the purposes of the trust.”

Trusts – Beneficiaries

- Beneficiaries as holdover occupants
- Beneficiaries who moved in with parents/settlors to provide caregiving
- Terms of the Trust control
- Beneficiary must pay FMV rent
- Offset from beneficial share possible however:
  - Duty of Impartiality (Prob. Code, § 16003.)
  - NOPA process or Petition for Instructions under Prob. Code, § 17200.

Trusts – Evictions

- Holdover occupant (regardless of who), won't leave. Now what?!
- Writ of Possession
- Unlawful Detainer action
- Trust Options and Petitions
  - Notice of Proposed Action under Probate Code section 16500 et seq.
  - Petition for Instructions under Probate Code section 17200.
  - Unilateral UD action

Probate Estates – General

- Nominated versus appointed Personal Representatives
- Petition for Probate
- Typical fact pattern includes need to sell and holdover occupant
- Special Administrations – is there an urgency?

Probate Estates – Leasing

- Leasing is an exception, not the norm.
  - Public policy for timely administration
  - Fiduciary duties
  - Terms of lease
    - No court approval needed if less than $5,000 per month and no loner than 1 year or
    - Month-to-month for any rental amount. (Prob. Code, § 9941.)
- No court approval needed with IAEA powers
  - NOPA required for lease longer than 1 year. (Prob. Code, § 10536, subd. (b).)

Probate Estates – Sale

- Grounds for sale:
  - Must sell per Will.
  - Discretionary Sale
    - “necessary” to pay debts, devises, family allowance, administration expenses, taxes” (Prob. Code, § 10000, subd. (a).)
    - To the advantage and best interests of estate beneficiaries. (Prob. Code, § 10000, subd. (b).)

Probate Estates – Sale

- Authority to Sell:
  - Independent Administration of Estates Act (“IAEA”)
  - Full IAEA authority
    - NOPA process
    - Any objection triggers requirement to follow court confirmation process
    - No objection – can proceed with sale
  - Limited IAEA authority
    - NOPA and court confirmation required.

Probate Estates – Evictions

- Authority to commence and maintain actions. (Prob. Code, § 9820.)
- Communication with beneficiaries
- Notice of Proposed Action (Prob. Code, § 10580.)

Conservatorships – General

- Conservatorship of the Estate
- Conservatorship of the Person
- Temporary Conservatorships

Conservatorships – General

- Conservator must use ordinary care and diligence in managing estate assets. Prob. Code, 2401.
  - "reasonable care, skill, and caution under the circumstances then prevailing that a prudent person in like capacity would use in the conduct of an enterprise of like character and with like aims." Prob. Code, 16040, subd. (a).
  - Duty to accommodate desires of conservatee. Prob. Code, 2113.
  - Creating new leases – depends on lease terms and powers granted
  - Selling property – depends on which property and powers granted

Conservatorships – General

- Court grants conservator general powers and independent powers
  - General powers
  - Independent powers under Prob. Code, 2591
- Temporary Conservator powers
  - Limited generally to marshalling assets
  - No power to sell/lease/litigate
  - Can request additional, independent powers under Prob. Code, 2252/2590, such as power to sell or lease property.

Conservatorships – General

- Spouses
  - When one spouse or domestic partner has a conservator, management of the property remains with the well spouse. Prob. Code, 3051.
  - For transactions requiring both spouse's signatures (for example, a lease), the signature of the conservator is needed. Prob. Code, 3071.

Conservatorships – Need to Rent

- When is Court authorization not required?
  - Independent powers granted under Prob. Code, § 2591, subd. (i)
  - **OR**
  - Lease terms are:
    - Month-to-month for any rental amount **or**
    - Less than $5,000/mo for 2 years or less. (Prob. Code, § 2555.)

Conservatorships – Need to Rent

- When is Court authorization required?
  - Terms (for general conservator)
    - More than $5,000/mo and longer than month-to-month
    - Less than $5,000/mo and longer than 2 years
  - Temporary conservator
    - Need independent power to lease

Conservatorships – Need to Evict

- For Sale Purposes
  - Conservator needs funds for support
  - Conservator will never be returning home
  - More prudent to sell than to rent (e.g. significant deferred maintenance)

Conservatorships – Need to Evict

- For Sale Purposes
  - Sale of Real Property under Independent Powers
    - Can sell anything but the conservatee's residence
    - No need for notice, hearing, court approval, instructions, confirmation, etc.
    - Sale of residence has special proceedings/requirements
  - Sale of Real Property absent Independent Powers
    - Must comply with Probate Code sections 10300-10316, which deal with notice, terms of sale, confirmation of sale, and conveyance of property.

Conservatorships – Need to Evict

- To remove problematic occupant
  - Types of occupants
    - Surviving spouses?
    - Child of conservatee
    - Third parties

Real Estate Law - Introduction

- Occupant not a tenant
- Leases and rent collection
- Access to property
- AB 1482
- Keys for Cash

What if the occupant is not a tenant?

- What if the occupant of a property is a trust beneficiary, relative or friend of the deceased owner?
- Factors to consider:
  - Has the occupant ever paid rent?
  - Does the occupant have an agreement allowing them to reside at the property?
  - Is the occupant a licensee? Non-rent paying guest.
  - Consider termination of license to occupy.
  - Multiple owners on title after death of former owner. Also consider partition.



Rental Agreements

Importance of having a good rental agreement in writing signed by the parties.

Using a well thought out written agreement that incorporates provisions relevant to the state of California, as well as any local rules (don't just take a generic template from the Internet).

What happens if there is no written lease or the lease is verbal?

Common/ Important Lease Terms



Payment of Rent – Clearly defined rent amount, due date, and who can pay the rent.



Subletting/assignment/occupancy – Who can legally occupy the property? Note that some cities limit the ability to enforce these terms.



Attorney fees provisions – Prevailing party versus each side bearing own fees (consider caps on fees if there is prevailing party fee clause to limit risks). Watch for mediation and/or arbitration clause.



Anti-waiver provision - Failure to enforce term in one instance does not forever waive the right to enforce that term.

Security Deposits

- Governed by California Civil Code Section 1950.5.
- CA law does not allow non-refundable deposits.
- New CA law went into effect on July 1, 2024, limiting security deposits to one month's rent for both furnished and unfurnished units, with some exceptions for small landlords (AB 12).
  - Exceptions: Landlords with no more than two residential rental properties, collectively including no more than four residential units, may still collect up to 2 x monthly rent as a security deposit.
  - Landlord must hold the property as a natural person, LLC (members are natural persons), or a family trust.

Under Old Law: No more than 2 x monthly rent for unfurnished or 3 x for furnished (some limitations for military service members).

- Best practices: landlords should not collect separate deposits for keys, cleaning, last month's rent, pets, etc.
- Third party payment must be accepted if a certain disclosure is provided. See Civil Code Section 1947.3.
- Some local ordinances require payment of interest, i.e. San Francisco.
- Itemized statement for accounting due within 21 days of tenant move out.
- Permissible deductions include for unpaid rent, damage beyond normal wear and tear, etc.

Rent Collection

- Keeping a ledger
- No partial amounts
- Late fees (ensuring the amount collected is lawful and not "liquidated damages")
- Only accepting rent from tenants on lease
- Pros and cons of electronic payments (controlling who makes deposits, how much, and when (e.g., in event of eviction and need to stop collecting rent)



Rent Collection - Permissible Types of Payment and Third-Party Payors: Civil Code Section 1947.3

- In most situations, the landlord must allow a tenant to pay rent and security deposit by at least one form of payment that is neither cash nor electronic funds transfer (exception – for a limited period after tenant writes an "NSF" check)
- Landlords must allow the tenant to pay rent through a third party when the third party has provided to the landlord or landlord's agent a signed acknowledgment stating that they are not currently a tenant of the premises for which the rent payment is being made and that acceptance of the rent payment does not create a new tenancy with the third party.

I, [insert name of third party], state as follows:

I am not currently a tenant of the premises located at [insert address of premises].

I acknowledge that acceptance of the rent payment I am offering for the premises does not create a new tenancy.

(signature of third party) _____	(date)



Repairs

- Handling and promptly responding to tenant requests
- Written record of efforts to make repairs
- Keeping receipts of work done
- Using licensed contractors
- CC 1942.4: violation notices ($100-$5,000 per violation, plus attorney fees)

Right to Access Unit

1. California Civ. Code § 1954 allows a real estate agent to enter a tenant's unit to show it to prospective purchasers, contractors, etc.
2. Must provide and properly serve lawful written 24-hour notice of entry and the entry must be made during normal business hours.
3. Normal business hours can include weekends for the purposes of holding open houses.
4. An owner or agent may provide a tenant with verbal notice of entry to show the unit to purchasers only if the owner or agent provided the tenant with a written notice of sale within 120 days prior to the verbal notice.
5. A 24-hour notice is not required if the tenant is present and consents to the entry.

Entering a Tenant's Unit

An owner may enter a tenant's unit under the following circumstances (not exhaustive):

1. In case of an emergency
2. To make necessary or agreed repairs, alterations, or improvements.
3. To supply necessary or agreed services
4. To show the unit to prospective or actual purchasers, mortgagees, residents, workers or contractors.
5. Court order

Repairs

- Remember that entering a tenant's unit to perform repairs requires advance notice to the tenant.
- Some cities, as well as state law (AB 1482) provide for temporary or permanent tenant displacement in order for the landlord to perform repairs that make unit unsafe/unlivable while work is being performed.
  - **Statewide: AB 1482/Civil Code 1946.2**
    - Owner complying with:
      - (I) An order issued by a government agency or court relating to habitability that necessitates vacating the residential real property.
      - (II) An order issued by a government agency or court to vacate the residential real property.
      - (III) A local ordinance that necessitates vacating the residential real property.
    - Intent to demolish or to substantially remodel the residential real property requiring tenant to vacate for at least 30 days.
    - Relocation payment = 1 month of rent
    - 2024 changes to law: if the substantial remodel is not commenced or completed, the owner must offer the right to re-rent with same terms and same rental rate in effect at time the tenant vacated.
    - Owner must have permits, description of remodel, timeline, notify after re-occupying following substantial remodel of right to return. The tenant has the right to return after the remodel is done.

AB 1482

- The California legislature passed Assembly Bill 1482 in September of 2019. This bill, known as the Tenant Protection Act, went into effect on January 1, 2020 and does two things: (1) imposes a percentage limit on annual rent increases that a landlord can impose and; (2) requires a landlord to have a "just cause" in order to terminate a tenancy.
- Fault vs No Fault Reasons
- These rules apply to all residential tenancies in California, unless the tenancy and/or the property are exempt from AB 1482.

What Properties Are Exempt from Rent Caps Under AB 1482?

Certificate of Occupancy within the previous 15 years (rolling basis).

Housing subject to a more restrictive local rent control ordinance.



What Properties Are Exempt from Rent Caps Under AB 1482?

Owner occupied duplex: owner occupied one of the units at the beginning of the tenancy and continues to occupy as principal place of residence.

Dormitories.



What Properties Are Exempt from Rent Caps Under AB 1482?

Affordable housing units, project-based section 8, voucher based section 8.

Single Family Homes and Condos [residential property that is alienable separate from title to any other dwelling unit]



What Properties Are Exempt from Rent Caps Under AB 1482?

Single Family Homes and Condos Exemption Continued…

- Property cannot be owed by:

1) Real Estate Investment Trust (REIT) as defined by Section 856 of the Internal Revenue Code
2) Corporation
3) LLC where at least one member is a corporation

- Must provide written notice to the tenant if an owner is claiming an exemption.

- Tenancy existing before July 1, 2020 then the notice is not required to be in the rental agreement.

- Tenancy commenced or renewed after July 1, 2020, the notice must be provided in the rental agreement.

What Properties Are Exempt from Rent Caps Under AB 1482?

Single Family Homes and Condos Exemption Continued…

Must provide written notice to the tenant if an owner is claiming an exemption.

Many leases have this provision. Remember to check the box.

"This property is not subject to the rent limits imposed by Section 1947.12 of the Civil Code and is not subject to the just cause requirements of Section 1946.2 of the Civil Code. This property meets the requirements of Sections 1947.12 (d)(5) and 1946.2 (e)(8) of the Civil Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation."

RENT INCREASE LIMITS UNDER AB 1482



Annual rent increases limited to 5% + CPI



Maximum of 10%.



2 increases in a 12 month period; combined amount cannot exceed the 5% + CPI.



30 day notice for increase of 10% or less



90 day notice for increase of more than 10%



Add 5 days for mailing if mailed from CA.



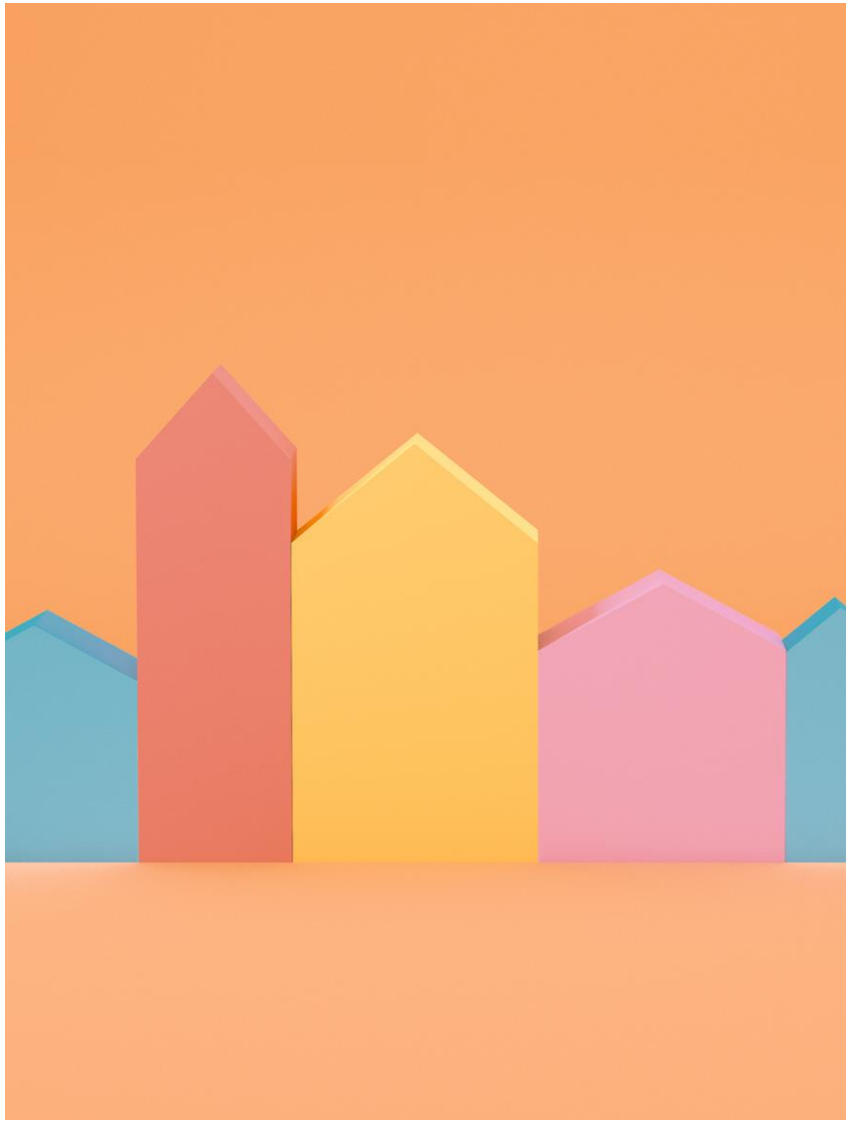
No Rent Gouging (Penal Code 396)

Tenancy Termination: What tenancies are subject to AB 1482?

Just Cause For Eviction Protections Are Only Applicable If:

All tenants have continuously and lawfully occupied the residential real property for 12 months; OR

At least one tenant has occupied the unit for 24 months.





What properties are exempt from AB 1482?

1. New Construction: Housing that has been issued a certificate of occupancy within the previous 15 years.

2. Single-Family Homes & Condos *if*:
   Owner is not any of the following:
   - Real estate investment trust (Internal Revenue Code 856)
   - Corporation
   - An LLC with a corporate member.

** Exemption only applies if the tenants have been provided with written notice of the exemption using the statement provided in AB 1482.

3. Duplexes where the owner has ***continuously*** occupied one of the units as the ***owner's principal place of residence***.

(continued on next slide)

What properties are exempt from AB 1482? (continued)

4. Shared Housing with the Owner:

- Housing accommodations in which the **tenant shares a bathroom OR kitchen with the owner** who maintains their **principal residence at the property**
- **Owner-occupied** single-family homes with in-law units, granny units or accessory dwelling units where the owner rents or **leases no more than 2 units or bedrooms**

5. Affordable housing units, project-based section 8, voucher based section 8 and BMR units.

6. Hotels

7. Non-profit Hospitals / Religious Facilities / Extended Care Facilities / Licensed Residential Care Facilities For The Elderly / Adult Residential Facilities

8. Dormitories owned and operated by a school

**Also, a property will not be subject to both AB 1482 and a local ordinance requiring just cause for eviction. Generally, the local ordinance will instead apply.



AB 1482 Just Cause for Eviction

"Just cause" is broken into 2 categories:

(1) Fault Based (tenant did something wrong); or

(2) No-fault Based (the landlord needs to recover possession of the property for their own reason)

Reminder: The expiration of a lease is not a just cause reason.

AB 1482 Fault Based Reasons For Eviction

At Fault Just-Cause:

- Non-payment of rent
- Breach of material term of lease (requires notice to correct violation before notice to cure or quit)
- Nuisance, criminal activity, or illegal use
- Committing waste
- Failure to renew lease after a written request from the owner
- Refusal to allow legal entry
- Employee's failure to vacate after employment has been terminated
- Failure to vacate after providing owner written notice of intent to vacate

AB 1482 No-Fault Reasons For Eviction

There are 4 “No-fault” reasons for eviction.

1. Owner or Relative Move-In

Can only be done if the owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents are going to move in.

For leases entered into after July 1, 2020: Can only be done if a provision of the lease allows the owner to terminate the lease if the owner or their qualified relative unilaterally decide to occupy the unit.

New changes to law:

Owner must be a natural person owning at least 25% of property. Must move in within 90 days of tenant vacating and reside in unit for 12 months.



AB 1482 No-Fault Reasons For Eviction

2. Withdrawal of the Residential Real Property from the Rental Market

3. A City or County Agency Requires That The Unit Be Vacated Due To Uninhabitable Conditions.

4. Intent to Demolish or to Substantially Remodel the Residential Real Property.

"Substantially Remodel" means the replacement or substantial modification of any structural, electrical, plumbing or mechanical system that requires a permit, or the abatement of hazardous material, including lead-based paint, mold or asbestos that cannot be reasonably accomplished in a safe manner with the tenant in place and that requires the tenant to vacate for more than thirty days. Cosmetic improvements alone, including painting, decorating, and minor repairs, or other work that can be performed safely without having the unit vacated does not qualify.



Relocation Expenses – Required for No-Fault Evictions

A landlord who evicts a tenant for any "No-Fault" reason must, regardless of the tenant's income, do one of the following **at the owner's option:**

a) Pay the Tenant one month's rent within fifteen days of serving the eviction notice; or

b) Waive the payment of rent for the final month in occupancy.

- If the tenant does not vacate at the expiration of the notice, the landlord may recover the relocation assistance as damages.



Tenant Buyouts

Some cities such as San Francisco, Oakland, and Berkeley regulate discussions between landlords and tenants in which landlords are providing tenants money and/or something else of value (e.g., rent waiver) in exchange for voluntarily moving out of a residential property.

Typically, there are few components to these rules:

1. Require service of prebuyout disclosure forms and service of declaration with Rent Board before having any buyout negotiations
2. Requirements for written agreement with mandatory language
3. Buyout agreement is recorded/public record
4. Rescission periods – tenants can change their mind for certain period of time

Enforcing Lease Terms

- If a tenant is breaching a lease, what are the landlord's options to enforce the lease?
- Consider warning notice or serving a notice to cure or quit based on breach of lease. Some jurisdictions require the breach to be substantial.
- Waiver issues – what happens if the landlord accepts rent while knowing of tenant breach? Is that a waiver? Review lease for anti-waiver clause.

Insurance

- Landlords should ensure they have a good rental policy in place before something goes wrong.
- Ensure the policy includes coverage for “wrongful eviction” and “personal injury”.
- Ensure the property address and owner names are correctly listed on the policy.
-Changing trends and increasing difficulty for landlords to get coverage.



Discussion Topics

- What did COVID change?
- UD versus Probate Court (County differences)
  - Solano County – beneficiary removed with 10 days notice
  - Sacramento County – writ of possession issued after probate order
  - Yolo County – double track approach, pros and cons
- UD versus Probate Court (timing/delays)
- Life estate deeds versus trust terms
- Evicting spouse and selling community property

Parting Thoughts



THE INFORMATION IS BASED ON THE RULES IN PLACE AS OF NOVEMBER 2024 AND IS NOT EXHAUSTIVE.



MORE LOCAL ORDINANCES ARE BEING ENACTED, SO IMPORTANT TO KEEP APPRISED OF THE UPDATES.



IMPORTANT TO REMEMBER THAT THESE LAWS CONTINUE TO CHANGE FROM TIME TO TIME.

Thank You!

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