



Justice Begins Here

## **LEGAL AID SOCIETY OF SAN DIEGO'S GUIDE TO THE SAN DIEGO RESIDENTIAL TENANT PROTECTION ORDINANCE:**

**Updated: March 27, 2024**

### **WHAT TENANTS AND LANDLORDS NEED TO KNOW**

This document is intended only to provide clarity for the public regarding existing requirements under the law or agency policies. This Fact Sheet is intended to provide accurate, general information regarding legal rights relating to housing in San Diego, California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, Legal Aid Society of San Diego, Inc. cannot ensure the information in this Fact Sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation. Please do not hesitate to call us to obtain the most up to date information regarding your situation.

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#### **1. What is the purpose of the amendment to the San Diego Residential Tenant Protection Ordinance (aka "the Amendment")?**

The purpose of the Amendment is to update existing local law known as the San Diego Residential Tenant Protection Ordinance ("SD TPO"), which requires Just Cause for termination of residential tenancies consistent with California Civil Code section 1946.2. The Amendment updates the SD TPO to clarify (among other things) what requirements must be met in order for a landlord to terminate a tenancy where the tenant is not at fault for the termination. Specifically, the Amendment: 1) defines what requirements must be satisfied for an owner to terminate a tenancy on the basis that they or a member of their family plan to move in; 2) defines what requirements must be satisfied for an owner to terminate a tenancy on the basis that they need to either demolish or substantially remodel the unit; and 3) creates remedies for tenants when a landlord violates the Tenant Protection Act.

#### **2. When does the Ordinance go into effect?**

The Amendment goes into effect April 1, 2024.

### 3. When does the Amendment end?

It is indefinite, unless amended by the City Council of San Diego.

### 4. Who is considered a Landlord under the Amendment?

An Owner or any person, acting as principal or through an agent, who has the right to offer residential rental property for rent, and includes a predecessor in interest to the landlord.

### 5. Who is considered an Owner under the Amendment?

An owner is any of the following: 1) A natural person that has at least a 25% recorded ownership interest in the residential real property; 2) a natural person who has any recorded interest in the residential real property if it is 100% owned by owners who are related to each other as either siblings, spouse, domestic partner, child, parent, grandparent, or grandchild; or 3) a natural person whose recorded interest in the property is owned through a LLC or partnership.

### 6. What is a “Residential Rental Property” under the Amendment?

Dwelling unit that is intended for human habitation, including rented dwellings in a mobilehome park.

### 7. What is defined as a Tenancy under the Amendment?

The lawful right to continuously use/occupy a residential rental property for more than 30 days. A tenancy does NOT include a fixed term lease of three (3) months or less, including an extension or renewal of a fixed term lease of 3 months or less.

\*The ordinance ONLY applies to a Tenancy as defined by the ordinance.

### 8. “Just Cause” is required to terminate a tenancy. What is Just Cause?

Just cause means that there needs to be a good reason for why a tenancy is being terminated. Under the Ordinance, there are two kinds of “Just Cause”: **At Fault Just Cause** and **No-Fault Just Cause**. The “fault” refers to whether the tenancy is being terminated because of something *the tenant* allegedly did/failed to do, or if the tenancy is being terminated because of something *the landlord* is choosing to do that is not caused by the tenant.

### 9. What are the types of “At Fault” Just Cause?

The Ordinance outlines the following list of reasons that a landlord can terminate a tenancy based on the tenant’s alleged actions/failure to act:

- a) Failure to pay rent;
- b) Breach of material term of the lease, including but not limited to, violating a term of the lease after being given a written notice to correct the violation.
- c) Maintaining, committing, or permitting the maintenance or commission of a nuisance;
- d) Committing waste;
- e) Tenant had a written lease that terminated on or after June 24, 2023, and after a written request, the tenant has refused to execute a written extension or renewal of the lease for an additional term of similar duration with similar provisions, so long as those terms don't violate the law;
- f) Criminal activity by the tenant on the residential real property, including any common areas; or criminal activity or threats on or off the property that is directed at the owner or agent of the owner of the property;
- g) Assigning or subletting the premises in violation of the Tenant's lease;
- h) Tenant's refusal to allow the owner to enter the residential real property when the Landlord is requesting to enter for lawful purposes;
- i) Using the premises for an unlawful purpose;
- j) When an employee, agent, or licensee, who is provided 100% of their housing as part of employment, fails to vacate after their termination as an employee agent, or a licensee.
  - **Exception:** Property Managers/ Agents who get a partial rent discount for their employment and pay the remainder of rent cannot be terminated under this section. The termination of employment terminates the rent discount, and the former employee is now a tenant responsible for 100% of the rent.
- k) When the Tenant fails to deliver possession of the residential real property after providing the Owner written notice of the tenant's intention to move out or making a written agreement with the Landlord to move out which is accepted by the Landlord in writing, but tenant fails to timely move out.

**10. What is an example of Maintaining, committing, or permitting the maintenance or commission of a nuisance?**

Examples could include constantly having loud parties during quiet hours after warnings have been given; or repeated harassment of neighbors/other tenants on the property. Whether these or other factors amount to a nuisance is a fact specific analysis that will depend on the facts of a given situation.

**11. What is an example of committing waste?**

Examples could include a tenant damaging the unit, causing it to be worth a lot less; or failing to report needed repairs to the landlord that cause ongoing damage to the

unit such as failing to report a plumbing leak that caused ongoing damage that could have been mitigated if reported right away.

## 12. What are the requirements are owners when terminating a tenancy (evicting a tenant) for At-Fault Just Cause?

In addition to existing notice requirements, the Ordinance requires landlords to also do the following when attempting to terminate a tenancy for at-fault just cause:

- a) **Give Notice to the Tenant of Curable Lease Violations:** If the Landlord is terminating the tenancy for a curable (fixable) lease violation, the Landlord must first give the Tenant a written notice of the alleged violation. The written notice must include a description of the violation(s) and an opportunity to cure (fix) the violation.

**Note:** If the violation is not cured within the time period set forth in the notice to cure, a 3-day Notice to Quit *without* an opportunity to cure the violation may be served to terminate the tenancy.

- b) **Give Notice to the Commission (SDHC):** The Landlord must provide written notice to SDHC no later than three (3) business days after the date the landlord provided the notice terminating the tenancy to the tenant. **This does not apply until 30 days after SDHC establishes a submission portal and provides the public notice of its creation. (REQUIREMENT CURRENTLY NOT IN EFFECT)**

**Note:** No current estimate on when this will go into effect.

## 13. What is an example of a curable (fixable) lease violation?

An example of a curable lease violation that would first require a notice to cure would be if a tenant failed to pay their utilities according to the lease agreement. In that scenario, the Landlord must serve the tenant with a Notice to Perform Covenants or Quit, giving the tenant an opportunity to make the payment before the landlord can serve a Notice to Quit (terminating the tenancy) for the same violation.

## 14. What are the types of “No Fault” Just Cause?

The Ordinance outlines the following list of reasons that a landlord can permissibly terminate a tenancy for reasons *not* caused by the tenant:

- a) Owner intends to occupy the unit for the owner, their spouse, domestic partner, child, grandchild, parent, or grandparent;
- b) Owner has decided to withdraw the Residential Rental Unit from the rental market;
- c) Owner is complying with any of the following:
  - An order issued by a government agency or court that requires the tenant to vacate for at least 30 days based on habitability;
  - An order issued by a government agency or court to vacate the unit; or

- A local ordinance that requires vacating the unit.

**Note:** If a government agency or court determines the Tenant is at fault for the condition triggering the need to vacate, the tenant is not entitled to relocation assistance.

- d) Owner intends to **Substantially Remodel** or completely demolish the unit.

### **15. When can a landlord terminate a tenancy based on their intent to occupy?**

For leases entered into on or after June 24, 2023, intent to Occupy by Landlord shall only be a basis for termination **if the Tenant agrees, in writing**, to the termination, or if a provision of the lease allows the Landlord to terminate the lease if the Landlord unilaterally decides to occupy the residential real property.

For leases entered into prior to June 24, 2023, the addition of a provision to a new lease, renewed lease, or fixed term lease allowing the Landlord to terminate a tenancy for the Landlord's Intent to Occupy the unit constitutes a substantially similar term for the purposes of "At Fault" Just Cause based on the Tenant's refusal to enter into new lease.

### **16. Can a landlord use intent to occupy as a basis to terminate a tenancy if the intended occupant already lives in another unit on the property or if there is another similar unit that is vacant?**

No. A landlord could not use intent to occupy as a basis to terminate if either of those circumstances exist.

### **17. Can anyone other than the landlord move into the property under the intent to occupy?**

Yes. Under intent to occupy, the person(s) moving into the unit can be the owner, owner's spouse, owner's domestic partner, children, grandchildren, parents or grandparents.

### **18. What needs to be in a notice to terminate tenancy based on an owner's intent to occupy?**

In addition to existing notice requirements, the notice must contain: 1) the name(s) and relationship to the owner of the intended occupant; 2) notification that the tenant may request proof that the intended occupant is an owner or related to the owner.

Proof of the relationship between the owner and the intended occupant is provided only upon request by the tenant.

**19. Does the Amendment provide a timeline for an owner or their family member to move in?**

Yes. Under the Amendment, an owner or their qualifying family member must move into the unit within 90 days of the tenant vacating the unit, and they must occupy the unit for a minimum of at least 12 continuous months as their primary residence.

If the owner or family member moves into the unit within 90 days but dies before they have lived in the unit for 12 continuous months, that will not be considered a violation.

**20. What happens if an intended occupant doesn't move in within 90 days of the tenant moving out or doesn't stay for 12 continuous months as their primary residence?**

The owner must offer the unit to the tenant who vacated it at the same rent and lease terms that were in effect at the time the tenant vacated AND shall reimburse the tenant for reasonable moving expenses that the tenant incurred in excess of any relocation assistance that was already paid to the tenant in connection with the written notice terminating the tenancy.

**21. What does it mean to "Substantially Remodel" under the Amendment?**

Substantial Remodel means either of the following that cannot be reasonably accomplished in a safe manner that allows the tenant to continue living in the unit, and requires the tenant to move out for at least 30 consecutive days:

- a) The replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a government agency; OR
- b) The abatement of hazardous materials, including lead-based paint, mold, or asbestos, in accordance with applicable federal, state, and local laws,

The following are NOT considered substantial remodels: cosmetic improvements alone (such as painting, decorating, and minor repairs), or other work that can be performed safely without having to vacate the unit.

**22. Does a landlord need to get permits for the planned substantial remodel or demolition before giving a tenant a notice to terminate their tenancy?**

Yes. A landlord cannot attempt to terminate the tenancy on this basis without first obtaining the necessary permits. The landlord is required to post a copy of their *application* for the permit(s) at the residential rental property within three (3) business days of submitting their application for the permit(s).

Only *after* the permits have been secured can the landlord then issue a notice to terminate the tenancy.

**23. If repairs or an abatement of the unit require the tenant to vacate for less than 30 days, but cosmetic improvements are done afterwards, does a tenant have to remain out of the unit until the cosmetic improvements are complete?**

No. Under the Amendment, a tenant is not required to vacate or remain out of the unit on any days where they could otherwise continue living in the unit without violating health, safety, and habitability codes/laws. Since cosmetic improvements are not considered substantial remodels, a tenant would not be required to vacate/remain out of the unit while those improvements are made.

**24. What needs to be in a notice to terminate a tenancy based on substantial remodel or demolition of the property?**

In addition to existing notice requirements, the notice must be in writing and contain ALL of the following, certified under penalty of perjury:

a) A statement informing the tenant of the owner's intent to demolish the property or substantially remodel it; **AND**

b) The following statement:

“If the substantial remodel of your unit or demolition of the property as described in this notice of termination is not commenced or completed, the landlord must offer you the opportunity to re-rent your unit with a rental agreement containing the same terms as your most recent rental agreement with the landlord at the rental rate that was in effect at the time you vacated. You must notify the landlord within thirty (30) days of receipt of the offer to re-rent of your acceptance or rejection of the offer, and, if accepted, you must reoccupy the unit within thirty (30) days of notifying the owner of your acceptance of the offer.” **AND**

c) A description of the substantial remodel to be completed and the approximate expected duration of the remodel, OR if the property is being demolished, the expected date by which it will be demolished, **PLUS** one of the following:

- A copy of the permit(s) necessary for the demolition or substantial remodel; OR
- If the notice is issued to abate hazardous materials and does not require a permit, a copy of the signed contract with the contractor hired by the landlord to complete the substantial remodel, that reasonably details the work that will be done to abate the hazardous materials.

- d) A statement saying why the work cannot be reasonably accomplished in a safe manner with the tenant in place and requires the tenant to vacate for at least 30 days; **AND**
- e) Notice that if the tenant that if the property is offered again for rent or lease within five (5) years of the date they were evicted, they have the right to receive an offer to renew the tenancy and 30 days to accept the offer, and that to exercise that right, the tenant has to:
  - Notify the landlord in writing within 30 days of receiving the notice of termination of their desire to receive an offer to renew their tenancy;
  - Provide the landlord with a mailing or email address where landlord can send the offer; and
  - Provide landlord a change of mailing address or an email address

**25. What happens if the substantial remodel or demolition of the property doesn't start or isn't completed as described in the notice?**

The owner must offer the unit to the tenant to re-rent with a rental agreement containing the same terms as the most recent rental agreement with the owner at a rental rate that was in effect at the time the tenant vacated.

Once the landlord offers to re-rent the unit to the tenant with the terms above, the tenant **MUST** let the landlord know within 30 days of receiving the offer if they accept or reject the offer. If the offer is accepted, then the tenant must reoccupy the unit within thirty (30) days of notifying the landlord that the offer is accepted.

**26. What requirements are Landlords/Owners subject to when terminating a tenancy for No-Fault Just Cause?**

When terminating a tenancy for no-fault just cause, a landlord is required to give notice of the termination to *both* the tenant *and* the San Diego Housing Commission.

**Notice to the Tenant:** A Landlord must give written notice at least 30 or 60 days prior to proposed termination date pursuant to Civil Code section 1946.1; the notice must be in at least 12-point font and must contain the following:

- a) The basis of the termination;
- b) Notice to the tenant of their right to receive relocation assistance (see FAQ #27) from the landlord by either a direct payment or a waiver of rent
  - If the Landlord chooses to make a direct payment to the tenant, the notice must state the amount of relocation assistance and that the landlord shall provide the payment within 15 days from the date of the notice



- If the Landlord chooses to waive rent, the notice must state the amount of rent waived and that no rent is due for final corresponding months of the tenancy.
- c) Notice to the tenant of their right to receive an offer to renew the tenancy and 30 days to accept that offer if the rental property is offered again for rent/lease for residential purposes within five (5) years of date tenant was evicted (**does not include Withdrawal from Rental Market no-fault evictions**) if Tenant does the following:
  - Notifies the Landlord in writing within 30 days of receiving the termination notice of the tenant's desire to receive an offer to renew the tenancy; **AND**
  - Provides the Landlord with a mailing address or email address for the landlord to send the offer; **AND**
  - Provides the landlord with any change of mailing address or email address.

**Notice to the San Diego Housing Commission:** The Landlord must provide written notice to Commission no later than three (3) business days after the date the landlord provided the notice to the tenant. The requirement to give notice to the Commission does not apply until **30 days after** the Commission establishes a submission portal and provides the public with notice of its creation.

**REQUIREMENT CURRENTLY NOT IN EFFECT**

**Note:** No current estimate about when the portal will launch.

## **27. What are a tenants' rights to relocation assistance for No-Fault Just Cause under the Amendment?**

Regardless of a tenant's income or the length of their tenancy, a Landlord must provide relocation assistance to the tenant by either: (1) a **direct payment** to the tenant; OR (2) a **waiver** of the final months of rent due.

**Note:** If Tenant fails to vacate after expiration of notice, the actual amount of relocation assistance provided may be recoverable by the Landlord as damages in unlawful detainer action if the Landlord prevails.

## **28. If a landlord chooses to waive rent as part of a notice of termination for no-fault just cause, how much rent is waived?**

Two (2) months of the actual contract rent.

If the tenant is Elderly or Disabled (for definitions see FAQ 30 & 31), then the amount waived must be equal to three (3) months of actual contract rent.

**29. If a landlord chooses to make a direct payment to the tenant for relocation costs, how much is the payment?**

A direct payment for relocation costs will be equal to two (2) months of the tenant's actual contract.

If the tenant is Elderly or Disabled (for definitions see FAQ 30 & 31), then the amount waived must be equal to three (3) months of actual contract rent.

If there are more than one tenant occupying the unit, the landlord may make a single direct payment to all the tenants named in the lease.

**30. What does it mean to be "Elderly" under the Ordinance?**

Any person 62 years or older.

**31. What does it mean to be "Disabled" under the Ordinance?**

Any person with a disability as defined in California Government Code Section 12955.3, as may be amended.

**32. What remedies do Tenants have if Landlords violate the Ordinance and its Amendments?**

The following options are available to tenants if landlords violate any of the provisions under the ordinance and its amendments:

- a) Tenant may file a legal action against the Landlord;
- b) Tenant may seek injunctive relief, equitable relief, and money damages, including punitive damages;
- c) Tenant may raise the violation or noncompliance as an affirmative defense in an Unlawful Detainer (eviction case);
- d) Tenant can file a civil action for wrongful eviction and request up to 3xs the actual economic damages if a Landlord attempts or actually recovers possession of the property in violation of the Ordinance;
- e) Tenant can file a civil action against the landlord and request *at a minimum* 3xs the required relocation assistance AND actual economic damages if a Landlord fails to provide relocation assistance under § 98.0706(c);
- f) Tenant can request Reasonable Attorney's fees and costs in civil action that is NOT an unlawful detainer action (the amount will be determined by the court);
- g) Remedies under this section are cumulative and may be used with other remedies in this Division, law, statute, or other ordinance.

**33. Is a Landlord required to give a Tenant notice of the Ordinance? If so, when and how?**

Yes, an Owner of a Residential Rental Property subject to the Ordinance must provide written notice in no less than 12-point type to the Tenant as follows:

**“California law limits the amount your rent can be increased. See California Civil Code section 1947.12 for more information. Local law also provides that a landlord shall provide a statement of cause in any notice to terminate a tenancy. In some circumstances, tenants who are seniors (62 years or older) or disabled may be entitled to additional tenant protections. See Chapter 9, Article 8, Division 7 of the San Diego Municipal Code for more information.”**

The Landlord must also include a copy of the Tenant Protection Guide with the written notice above. The guide is available on SDHC’s website.

**Note:** For a Tenancy in a Residential Rental Property subject to the Ordinance **existing before** June 24, 2023, the notice required above **must be provided to the Tenant directly or as an addendum to the lease or rental agreement within 90 days (September 22, 2023) of the ordinance going into effect.**

For a Tenancy in a Residential Rental Property subject to this Ordinance that commenced or renewed **on or after June 24, 2023**, the notice required above **must be included as an addendum to the lease or rental agreement, or as a written notice signed by the Tenant, with a copy provided to the Tenant.**

**34. Are there any additional rules or regulations that may apply?**

The San Diego Housing Commission is establishing a submission portal for landlords to provide written notice to SDHC for both “at fault” and “no fault” evictions per section 98.0706(a)(2). This regulation will be effective 30 days after they provide the public notice of the portal creation.

Further, SDHC created the [tenant protection guide](#) which must be included with the notice of residential protections required under section 98.0705 of the Ordinance.

**35. Does the Amendment update which residential tenancies are NOT subject to the Ordinance?**

No. The Amendment does not update the list of exempted properties, which are:

- A. A tenant of a transient and tourist hotel;
- B. Any residential occupancy by reason of concession, permit, right of access, license or other agreement for a period of 30 consecutive days or less;

**Example:** An AirBNB or VRBO is exempt from the Ordinance.

- C. Housing restricted by deed (LITHC), regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for individuals and families of very low, low, or moderate income;
- D. Housing that is subject to an agreement that provides housing subsidies for affordable housing for the same individuals previously described. **This exclusion does NOT apply to a Tenant with a Section 8 Housing Choice Voucher;**
- E. Mobile homes subject to the MRL;  
**Example:** Owner residing in mobile home and renting space, not the mobile home itself.
- F. Housing accommodations in nonprofit hospitals, religious facilities, extended care facilities, licensed residential care facilities for the elderly, or **non-profit transitional housing;**
  - o **Non-profit Transitional** housing means housing operated by a non-profit organization for up to 24 months with supportive services to individuals and families with the goal of interim stability and support to successfully move to and maintain permanent housing, which may cover housing costs and accompanying supportive services for program participants.
- G. School owned housing;
- H. Housing in which the tenant shares bathroom or kitchen facilities with the Owner who maintains their principal residence at the Residential Rental Unit.
- I. Single-family owner-occupied residencies, including mobile homes, where the Owner-occupant rents or leases no more than two (2) units or rooms, including, but not limited to, an accessory dwelling unit (ADU) or junior ADU.  
**Example:**
  - i. **Exempt:** A tenancy in a single-family home or mobile home where the owner lives in one room and rents out 1 or 2 other rooms to tenants, collecting rent from them monthly.
  - ii. **Not Exempt:** A tenancy in a single-family home or mobile home where the owner lives in one room and rents out 3 or more rooms to 3 or more tenants, collecting rent from them monthly.
- J. A property containing two separate dwelling units within a single structure in which the Owner occupies one of the units as the Owner's principal place of residence at the beginning of the Tenancy, so long as the Owner continues in occupancy, and neither unit is an accessory dwelling unit or junior accessory dwelling unit.

**Example:**

- i. **Exempt:** A tenancy in a duplex in which the owner lives in one rental unit and the tenant lives in the other, the owner collects rent from the tenant monthly.
  - ii. **Not Exempt:**
    - 1. Tenancies in a property with 3 or more rental units in which the owner lives in one rental unit and the tenants live in the other units, the owner collects rent from the tenants monthly.
    - 2. Tenancies in a duplex in which the owner DOES NOT live in one of the two rental units and the owner collects rent from the tenants monthly.
- K. A Residential Rental Unit, including a mobilehome that is alienable separate from the title to any other dwelling unit, provided that both (A & B) of the following apply:
  - The Landlord is NOT any of the following:
    - a) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code;
    - b) A corporation;
    - c) A limited liability company(LLC) in which at least one member is a corporation;
    - d) Management of a mobile home park, as defined in Section 798.2 of the Civil Code.
  - The Tenants have been provided written notice that the Residential Rental Unit is exempt from this section.
 

**Example:** A tenancy in a condominium that is owned by person as an individual and the property's deed is in that individual's name, is exempt from the Ordinance so long as the Landlord as provided notice of the exemption to the Tenant(s).
- L. Housing that has been issued a certificate of occupancy within the previous 15 years, unless the dwelling is a mobilehome.

### 36. What bad faith behaviors does the Ordinance ban a Landlord from doing?

A Landlord cannot retaliate against a Tenant because of the Tenant's rights exercised under the Ordinance and Buyout Agreement protections.

### 37. Does the Ordinance and the Amendment apply to Section 8 voucher recipients?

Yes. Both the California Attorney General's Office and the U.S. Department of Housing and Urban Development (HUD) have provided written guidance, expressly outlining that rent cap protections in the Tenant Protection Act apply to Section 8 Housing Choice Vouchers. See [Letter from the California Attorney General](#) and [Letter from HUD](#).

**38. Does the Ordinance and the Amendment apply to mobilehomes?**

Yes. Mobilehomes are expressly included in the definition of Residential Rental Property.

**39. If a tenant is evicted from their home through an Unlawful Detainer lawsuit, can the Ordinance and Amendment be used to defend against the Unlawful Detainer lawsuit?**

Yes, a violation of the Ordinance or the Amendment may be asserted as an affirmative defense in an unlawful detainer or other civil action.

**40. Does the Amendment apply to tenancy termination notices that are served before April 1, 2024 (the effective period)?**

It will not apply to termination notices that have already been adjudicated (judgement entered) in the courts. For tenancy termination notices that have not been adjudicated, we currently do not know how the court will rule on this issue.

**41. What if I still have questions, who can I contact for assistance?**

The Legal Aid Society is open for in person or over the phone intakes Monday - Friday, 9:00 a.m. to 5:00 p.m. Call us at: **877-LEGAL-AID (877-534-2524)**

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