

## Benefits of Written Lease

A written lease is essential in California for both residential and commercial landlord-tenant relationships to protect the rights of both, and to clarify the terms and conditions of the tenant's interest in the real property. The California Association of Realtors ("CAR") provides both residential and commercial leases that can be completed for the specific circumstances of the lease.

The CAR also provides a Residential Lease After Sale that can be used by a seller of real property to lease it after the close of escrow, in most cases for possession of 30 days or more.

There are many benefits of a written lease as it enables the tenant to establish the nature of the tenancy, and it enables the landlord to evict the tenant if there are any breaches of the lease terms.

For example, a typical residential lease will specify the names of the landlord and each of the tenants, the address of the premises, and can limit the occupancy to the specified persons. The identity of the tenants is important as those are the persons the landlord is evaluating before entering into the lease. If the tenant allows persons to occupy the premises who are not identified on the lease, in most cases the landlord can serve a 3 day notice to cure the breach or quit the premises. Such a notice can be used for unauthorized alterations to the premises, or violations of the law such as a tenant keeping an inoperable vehicle parked on the premises, or breaches of the lease such as not using a designated parking space.

The lease can provide for a month-to-month tenancy or a specific term such as 1 to 5 years, and any optional extensions. The amount of rent owed, the dates the rent is due each month, and to whom the rent should be paid, can be specified. If payment is not made on time, the landlord can serve a 3 day notice to pay or quit.

A security deposit can be required and a provision in the lease can be enforced that the security deposit will not be returned until all tenants have vacated the premises and all keys returned. A security deposit must be accounted for in writing within 21 days after the tenants vacate the premises.

A tenant who causes damage to the premises or engages in illegal activities can be evicted, as well as a tenant who holds over after the lease expires. The occupancy of the premises by pets can be restricted, subject to California Civil Code § 54.2 regarding guide, signal, or service dogs.

The tenant's right to make repairs without the landlord's permission can be restricted. Also, the landlord's right to enter to make necessary or agreed repairs or to show the premises to prospective or actual purchasers, lenders, appraisers or contractors can be included in the lease.

It is important that the responsibility of the tenant for payment of utilities be specified in the lease, because water, gas, and electricity can be very expensive, and the tenant may conserve if the tenant is paying. If the tenant fails to pay the utilities, the tenant can be evicted and the unpaid utilities deducted from the security deposit.

A tenant can be restricted from sub-leasing the premises unless the landlord's consent is obtained. The tenant's obligations upon vacating the premises are specified in the CAR leases.

The tenant can be requested to execute and return a tenant estoppel certificate to the landlord within 3 days after its receipt, and the failure to comply with this requirement can be deemed tenant's acknowledgment that the estoppel certificate prepared by the landlord can be relied upon by a lender or purchaser. This can be a very important provision in those cases where the tenant may contend the tenant has an oral agreement with the landlord to purchase the premises.

A tenant can be required to use the premises only for lawful purposes, under federal, state and local law, and can be evicted for violations of any law or ordinance.

A written lease can provide for the recovery of attorney's fees by the party prevailing in any dispute regarding the lease, and the amount of recoverable attorney's fees can be limited to \$1,000 or another sum. The CAR forms provide for mandatory mediation of any disputes unless they are an unlawful detainer action or any matter within the jurisdiction of the small claims court (for monetary disputes up to \$10,000).

It can also include an incorporation clause that confirms the written lease is the final, complete and exclusive expression of the understandings and agreements between the parties, and any extension, amendment, modification or alteration must be in writing.

Disclosures required by California statute can be included in the lease, including those regarding lead-based paint, pest control, bed bugs, Megan's Law database, flood hazard, and residential environmental hazards.

Guarantors of the lease terms and payment of rent can be specified, and this provision will enable a landlord to collect from persons other than the actual tenant. Typically this provision is used for student tenancies with the parents acting as the guarantors.

Agency relationships with real estate brokers and their compensation can be specified.

The tenant's representations in the rental application can be deemed accurate, and if they were not, the tenant is subject to eviction. This can be a very important

provision in the event the landlord learns of material misrepresentations by the tenant in obtaining the landlord's consent to the lease.

The CAR restricts the use of its forms to authorized persons, and if the CAR forms cannot be used, another version of written lease can be used. In either case, the lease should be reviewed in detail by the landlord before presentation to the tenant, and the tenant should review it carefully before signing it. A properly prepared written lease can provide certainty for both the landlord and the tenant regarding their respective rights and obligations under the lease.

Many of these terms and provisions are also beneficial in other types of contracts, and competent legal advice should be sought regarding leases and other written contracts.