



Civil Code § 1946.7 Toolkit: Early Lease Termination for Survivors

The Toolkit Contains:

1. A Q&A explaining the law in plain English.
2. A sample 30-day notice that survivors can use to end their leases.
3. Safety planning concerns that should be addressed when using the law.
4. PowerPoint slides outlining the new law.
5. The text of Civil Code § 1946.7

What does this new law do?

Civil Code § 1946.7 took effect on September 27, 2008, so survivors can begin using it immediately. Civil Code § 1946.7 significantly changed existing law by permitting survivors of domestic violence, sexual assault, or stalking to end their leases early if they provide their landlords with a written 30-day notice and either a restraining order or police report.

Why was the law enacted?

Housing and domestic violence advocates throughout the state encountered several cases in which survivors had experienced violence at their rental units, yet were unable to move to safer homes. These survivors had signed one-year leases and could not convince their landlords to agree to end their leases. Under prior law, if a tenant moved from her apartment before the lease ended, she could be held responsible for the rent until the landlord re-rented the apartment, or the lease expired. As a result, some survivors delayed leaving their rental housing and remained at risk of experiencing continued acts of violence. On the other hand, survivors who broke their leases and fled from their abusers faced money judgments, along with poor landlord references.

How can this new law help survivors?

Tenants who are survivors of domestic violence, sexual assault, or stalking may terminate their leases early, leave the unit, and no longer be required to pay rent for the remaining lease term. The survivor is responsible for rent for up to 30 days after providing the landlord with written notice that she intends to end the tenancy, but not afterwards.

In addition to a written 30-day notice, the survivor must provide the landlord with a copy of a restraining order or a police report. The survivor's request to terminate the

lease must occur within 60 days of the date that (1) the police report was made or (2) the restraining order was issued. The survivor is entitled to return of the security deposit, subject to existing law permitting the landlord to deduct money for unpaid rent, damages beyond ordinary wear and tear, and reasonable cleaning charges. Other tenants who are on the lease, except members of the survivor's household, are not released from their obligations under the lease.

What are some of the law's limitations?

Survivors can use this law only if they have a police report or restraining order. National Housing Law Project recognizes that many survivors are unable to access the courts or law enforcement, and urges advocates to inform us if you are assisting survivors who need to break their leases but cannot obtain the required documentation. In some of these cases, it may be possible to negotiate with the landlord to end the lease.

Under existing law, a tenant is entitled to return of her security deposit 21 days after she vacates the rental unit. The new law does not affect this timeline, so in some cases a survivor may not receive her security deposit for up to 21 days after she leaves the rental unit. Advocates may need to assist survivors in making arrangements for the return of the security deposit, because providing the landlord with the survivor's forwarding address could pose safety risks. Options may include providing the landlord with a PO Box where the deposit can be mailed or designating a friend or family member who can pick up the deposit from the landlord.

How does the law affect the perpetrator's tenancy rights?

In addition to the law's lease termination provision, the law also states that if a person commits an act of domestic violence, sexual assault, or stalking at a rental unit, there is a presumption that the perpetrator has committed a nuisance. A landlord may choose to serve a three-day notice ordering the perpetrator to vacate the premises, *but only if the survivor already has left the unit*. The law was written this way to ensure that survivors are not living with their abusers when eviction proceedings are initiated, and to therefore prevent these survivors from experiencing retaliation. A survivor's safety plan therefore should take into account the fact that eviction proceedings may be initiated against the perpetrator once she leaves the rental unit.

For more information:

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New Law Allows Victims to Break Their Leases to Escape Violence



California has passed a new law allowing victims of domestic violence, sexual assault, and stalking to end their leases early. If you need to break your lease to move away from your abuser, the law may protect you from being charged additional rent or fees once you move out.

1. What is the lease termination law?

The lease termination law, which went into effect September 27, 2008, allows people who have a restraining order or a police report to end their leases without owing additional rent. This law was created to protect victims of domestic violence, sexual assault, and stalking. It applies to both private and subsidized housing.

2. What is the law's purpose?

In most cases, if you move from your apartment before your lease ends, you can be held responsible for all the rent that would be owed until your lease expires. Your landlord can sue you for this money. This law allows you to terminate the lease early, leave the unit, and no longer be required to pay rent. You will be responsible for rent for up to 30 days after notifying the landlord that you are moving out, but not afterwards. The law applies only if you are a victim of domestic violence, sexual assault, or stalking and meet certain criteria.

3. When should I use this law?

If you rent an apartment and have a lease, have a restraining order or a police report, and feel that you need to move due to acts of domestic violence, sexual assault, or stalking committed against you, you can use this law.

4. How does the lease termination law work?

To use this law, you must notify your landlord in writing that you were a victim of domestic violence, sexual assault, or stalking, and that you want to end your rental agreement. Be sure to date the notice. A sample notice is included at the end of this flyer.

Under the law, you must give the landlord at least 30 days' notice before the rental agreement can end. You should state that you will end the rental agreement at least 30

days from the date of the notice. For example, if the notice is dated September 27, 2008, the earliest the rental agreement can end is October 27, 2008. You are free to leave your apartment anytime after giving the landlord the written notice. However, you will still be responsible for rent up to 30 days after giving the landlord notice.

You must attach to the notice either: (1) a restraining order; or (2) a copy of a police report showing that you were the victim of domestic violence, sexual assault, or stalking. The restraining order or police report must have been issued no more than 60 days before your request to end the rental agreement.

Be sure to keep a copy of the 30-day notice and the supporting documents.

5. What type of restraining order must I have to use this law?

The law protects you if you or a family member has a domestic violence restraining order, a criminal protective order, a civil harassment order, or a juvenile court restraining order.

6. What if I have roommates who are on the lease?

Roommates who are on the lease and who are not members of your family can remain in the unit and will still be covered by the lease, even after you move out. They must continue to pay the full amount of rent due under the lease, including any share of the rent that you were paying.

7. How long must I continue to pay rent after I notify the landlord that I am ending the lease?

You will be responsible for paying rent for up to 30 days after you give the landlord notice that you are ending the lease. You are free to move out anytime after giving the landlord your 30-day notice. If you leave, and the landlord re-rents the unit within 30 days after you gave the notice, the landlord must refund your rent for those days in which the new tenant occupied the unit.

8. What will happen to my security deposit?

Your security deposit will be treated the same way as if you had used the usual procedure for ending a tenancy. Your deposit must be returned to you within 21 days after you vacate the unit. The landlord may deduct money from your deposit for unpaid rent, damages beyond ordinary wear and tear, and reasonable cleaning charges.

Note that it may not be safe for you to provide your landlord with your new address, especially if you believe that the abuser will contact your landlord to find out where you have moved. Consider using a PO Box as your forwarding address or work with a domestic violence agency to see if they can provide you with a safe forwarding address. Another option is to sign a date and letter giving a friend or family member permission to pick up the deposit from your landlord, and inform the landlord of this arrangement.

9. Can I use the law if I have experienced abuse, but I don't have a restraining order or police report?

Unfortunately, the law requires that you provide either a restraining order or police report. If possible, you should avoid simply abandoning the unit, because the landlord may file a lawsuit against you for unpaid rent. Consider negotiating with your landlord to end the lease. A domestic violence organization or legal aid office may be able to assist you in speaking with your landlord. These agencies may also be able to assist you in obtaining a restraining order.

10. What if I have a month-to-month rental agreement?

You do not need to use the new law if you have a month-to-month rental agreement. You can move by giving your landlord written notice that you intend to leave the unit in 30 days.

11. What if I live with my abuser when I terminate the lease?

Once you move out of your apartment, a landlord may have grounds to evict your abuser if he or she has committed acts of domestic violence, sexual assault, or stalking against you on the rental property. Before the abuser can be required to leave the rental unit, the landlord must follow state law eviction procedures, including providing the abuser with notice of the reason he or she is being evicted. Before you move out, consider working with a domestic violence agency or a legal aid office to plan for your safety.

11. Where can I find the text of the new law?

The text of the new law is available at www.leginfo.ca.gov. Select "2007-2008" Session and search for "AB 2052". Once it is in print, the bill will be known as Civil Code § 1946.7.

30-Day Notice Terminating Tenancy

Date: _____

Dear _____:

I am a tenant at _____. I am a victim of domestic violence, sexual assault, or stalking within the past 60 days. Pursuant to California Civil Code Section 1946.7, this is my 30-day notice that I will end my rental agreement on _____.

I have enclosed (choose one or both) a copy of my restraining order, or a copy of a police report showing that I was the victim of an act of domestic violence, sexual assault or stalking.

Sincerely,

Signature

Name (Printed)

Address

Safety Planning for Victims Terminating their Leases or Rental Agreements

These are some things to keep in mind when developing a safety plan for victims/survivors who are terminating their leases or rental agreements pursuant to the new protections afforded under Civil Code § 1946.7.

- 1) Advise clients to pack a bag with all essential items, including important documents (i.e. passports, green cards/immigration documents, driver's license, bank account records, school and medical records, copy of restraining order and other court records etc.), favorite toy for children, important keys (car/safe deposit box), medications and any other items needed in the event that she/he needs to flee immediately
- 2) Advise clients to keep a copy of the restraining order with them at all times.
- 3) Advise clients to store the bag/items in a safe location that is not accessible to the abusive partner.
- 4) If children are involved, discuss with your client the best, age-appropriate way to inform the children of the escape plan.
- 5) If school-aged children are involved, it will be important to provide the school with notice and a change of address. Inform the school clearly of who can have access to the new address, and thoroughly explore the school's privacy policies. Do the same with the children's new school.
- 6) Help clients think through who needs to know about the change of address (i.e. credit card companies, final bill notices etc.) and how to notify these individuals/institutions in a manner that does not further compromise his/her safety. Suggest that the forwarding address be a safer location such as a PO Box or alternate address.
- 7) Before, during and after the move, clients should develop secure methods of communicating with the landlord, such as establishing a new email account on a safe computer (i.e. at the library or friend's place) and using a cell phone to which the abusive partner does not have access.

8) Prior to leaving the building or participating in the walk-through of the premises with the landlord, help clients think through all the safe exits in the building, and assist her/him develop a plan to leave the premises quickly. The client may also request a police escort during this time if the potential for lethality is high.

9) Depending on the helpfulness of the landlord, the client may feel comfortable asking him/her to secure the premises while in the process of moving out.

10) When completing any last-minute tasks such as returning the keys or signing off on the final walk through, help the client determine the potential lethality of the situation. If the lethality assessment is high, assist clients in brainstorming other options for interacting with the landlord.

11) When obtaining a refund of the security deposit, brainstorm options with clients such as obtaining a PO Box, using an alternate address (such as a relative or friend's address), or having the refund wired to a bank account that is not accessible to the abusive partner.

12) Discuss the pros and cons of enrolling in California's address confidentiality program, Safe at Home.

13) If the client is moving out of the state, explore other state address confidentiality programs and, when appropriate, reach out to victim services organizations in that state.

Civil Code § 1946.7: Early Lease Termination for Survivors

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Why was the law passed?

- Domestic violence, sexual assault, and stalking were not legally recognized reasons for breaking a lease
- A survivor who broke a lease would be liable for the rent until the landlord re-rented the unit, or the lease expired
- Consequences: survivors delayed leaving; faced money judgments

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When was the law enacted?

- AB 2052 was signed on Sept. 27, 2008, and became effective immediately
- Once the bill is in print, it will be known as Civil Code § 1946.7 (which is part of the landlord/tenant code)
- Thirteen other states have similar legislation

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Who is covered by the law?

- Survivors of domestic violence, as defined in the Family Code
- Survivors of sexual assault, as defined in the Penal Code
- Survivors of stalking, as defined in the Civil Code

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What proof is required?

- Written report by local or state peace officer; OR
- TRO or EPO, including:
 - DV restraining order
 - Criminal protective order
 - Civil harassment order
 - Juvenile court order

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How old can the proof be?

- Survivor must take action to terminate lease within:
 - 60 days from the date the police report was made; OR
 - 60 days from the date on which the TRO or EPO was issued

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What notice is required?

- Survivor must give landlord 30 days' written notice
- Survivor is free to leave anytime after giving the 30-day notice
- If landlord re-rents unit during the 30-day period, rent must be prorated

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What about the deposit?

- Existing law on security deposits applies
- Landlord must return deposit to survivor within 21 days after survivor vacates
- Landlord can deduct for:
 - Unpaid rent
 - Damages beyond ordinary wear & tear
 - Reasonable cleaning charges

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What about roommates?

- Tenants who aren't the survivor's family remain obligated under the lease
- These tenants must continue to pay full rent, including survivor's share
- Survivor may be unable to recover deposit until all roommates move out

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What if landlord refuses?

- The law doesn't penalize landlords who refuse to let survivors break their leases
- However, if a landlord brings an action against a survivor for unpaid rent, the survivor could use the law as a defense

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Clients lacking written proof

- If survivor lacks a restraining order or police report, the law doesn't apply
- But, survivor can negotiate w/landlord for an agreement to end the lease
- What's the key to success in these cases?
 - Advocacy, advocacy, advocacy!
- In any case, don't just leave!

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What about the batterer?

- If a tenant commits DV, stalking, or SA on the premises, there is a rebuttable presumption that the perpetrator committed a nuisance
 - What in the world does that mean?!?
- Applies only if victim has already left
- Will expire in 3 years
- Problems? Let NHLP know.

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Any other protections?

- The law does not provide a defense for survivors facing eviction due to DV
 - But, these tenants may have defenses under fair housing laws
 - Also, VAWA protects subsidized tenants
- The law does not prohibit landlords from denying survivors housing
 - But, VAWA & fair housing laws may apply

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Common problems


- Financial issues—the law is not a cure-all
- Many landlords are unaware of the law
- Many survivors are unaware of the law
- Roommates
- Cases where survivor lives with batterer
- Lack of a safety plan
 - Tips for getting survivors to make one?

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Safety planning

- Apply the same procedures you'd use in any case, and also consider:
 - How will survivor safely communicate with the landlord?
 - How can survivor safely recover the deposit?
 - What about last-minute tasks, such as the walk-through inspection & returning keys?


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Fair housing, in brief

- Attorneys have used fair housing laws to challenge policies that negatively impact survivors
- Attorneys have challenged:
 - Zero tolerance for violence policies
 - Policies holding tenants responsible for damage caused by non-guests
 - Transfer policies that didn't consider DV


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VAWA, in brief

- VAWA covers tenants in Section 8 and public housing ONLY
- VAWA prohibits applicants from being denied housing b/c of their status as a survivor
- VAWA prohibits tenants from having their assistance terminated due to acts of DV committed against them


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Takeaway points

- As with any DV law, you'll need to discuss this law's benefits and drawbacks with each client
- No need to be intimidated—the law is fairly straightforward
- More outreach is needed
- Survivors may have options in cases involving housing discrimination


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Help is out there!

- Please contact NHLP if:
 - You need assistance in using the law
 - You're seeing problems with the law
 - You have clients with housing issues
 - You'd be interested in advising on housing materials for DV advocates

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Questions?

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§ 1946.7. Victims of domestic violence, sexual assault, or stalking; written notice to terminate tenancy; requirements of notice

(a) A tenant may notify the landlord that he or she or a household member was a victim of an act that constitutes an act of domestic violence as defined in Section 6211 of the Family Code, sexual assault as defined in Sections 261, 261.5, 262, 286, 288a, or 289 of the Penal Code, or stalking as defined in Section 1708.7, and that the tenant intends to terminate the tenancy.

(b) A notice to terminate a tenancy under this section shall be in writing, with one of the following attached to the notice:

(1) A copy of a temporary restraining order or emergency protective order lawfully issued pursuant to Part 3 (commencing with Section 6300) or Part 4 (commencing with Section 6400) of the Family Code, Section 136.2 of the Penal Code, Section 527.6 of the Code of Civil Procedure, or Section 213.5 of the Welfare and Institutions Code that protects the tenant or household member from further domestic violence, sexual assault, or stalking.

(2) A copy of a written report by a peace officer employed by a state or local law enforcement agency acting in his or her official capacity, stating that the tenant or household member has filed a report alleging that he or she or the household member is a victim of domestic violence, sexual assault, or stalking.

(c) The notice to terminate the tenancy shall be given within 60 days of the date that any order described in paragraph (1) of subdivision (b) was issued, within 60 days of the date that any written report described in paragraph (2) of subdivision (b) was made, or within the time period described in Section 1946.

(d) If notice to terminate the tenancy is provided to the landlord under this section, the tenant shall be responsible for payment of rent for 30 days following the giving of the notice, or within the appropriate period as described in Section 1946, and thereafter shall be released from any rent payment obligation under the rental agreement without penalty. Existing law governing the security deposit shall apply.

(e) If within the 30 days following the giving of the notice under this section the tenant quits the premises and the premises are rented to another party, the rent due on the premises for that 30-day period shall be prorated. Existing law governing the security deposit shall apply.

(f) Nothing in this section relieves a tenant, other than the tenant who is, or who has a household member who is, a victim of domestic violence, sexual assault, or stalking and members of that tenant's household, from their obligations under the rental agreement.

(g) "Household member" as used in this section means a member of the tenant's family who lives in the same household as the tenant.