



# RESOLVING PROBLEMS

## TALK WITH YOUR LANDLORD

Communication is the key to avoiding and resolving most problems. If you have a problem with your rental unit, it is usually best to talk with your landlord before taking other action. Your landlord may be willing to correct the problem or to work out a solution. By the same token, the landlord (or the landlord's agent or manager) should discuss problems with the tenant before taking legal action. The tenant may be willing to correct the problem once they understand the landlord's concerns. Both parties should remember that each has the duty to deal with the other fairly and in good faith (see page 28). While the communication might be effective through talking, in some instances it may not be possible, or it just be better to communicate in writing, especially if there is a need to document the content of the communication.

If discussions with the landlord does not solve the problem, and if the problem is the landlord's responsibility, you should write to the landlord. Your written communication should describe the problem, its effect on you, how long the problem has existed, what you may have done to remedy the problem or limit its effect (although the law does not require a tenant to correct an inhabitable unit), and what action you would like the landlord to take. You should always keep a copy of your written communication.

If you have been dealing with an agent of the landlord, such as a property manager, you may want to directly contact the owner of the rental unit if you know or can learn the owner's identity. The name, address and telephone number of the owner, the property manager, or another person authorized to act on the owner's behalf with respect to notices to be given/received and service of process must be written in your rental agreement or posted conspicuously in the building.<sup>455</sup>

If you do not hear from the landlord after sending the letter or e-mail, or if the landlord disagrees with your complaint, you may need to use one of the tenant remedies that are discussed in this guide, or obtain legal assistance. The length of time that you should wait for the landlord to act depends on the seriousness of the problem. Normally, 30 days is presumed to be a reasonable time for the landlord to act unless the nature of the problem dictates otherwise (i.e. heater not working during extremely cold weather, a lack of hot water, a blocked sewer line, etc.).

Remember, communication can prevent little problems from becoming big ones. Attempting to work out problems benefits everybody. Sometimes, it is helpful to involve someone else, such as a trained mediator, but it is not required. If the problem truly cannot be resolved by discussion, negotiation, or acceptable compromise, then each party can look to the remedies provided by law.

## GETTING HELP FROM A THIRD PARTY

Many resources are available to help tenants and landlords resolve problems and there are some limited resources to help tenants with access to rental assistance programs. Check which of the following agencies are available in your area, review their websites to determine if they can offer you assistance, or call, email or write them for information or assistance:

- Local consumer protection agency (see the *City and County Government* listings in the government section of the phone book or go online to <https://www.usa.gov/state-consumer/california>).
- Local housing authority or housing department (see the *City and County Government* listings in the government section of the phone book, visit <https://housing.ca.gov/>, visit your local government's website, or visit <https://www.hud.gov/states/california/offices>).
- A HUD-Approved Housing Counseling agency. Search online at <https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?>

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- City or county rent stabilization board (see the City and County Government listings in the government section of the phone book or go online to <https://www.hud.gov/states/california/renting/tenantrights>).
- Local tenant association, or rental housing or apartment association. Check the business and advertisements sections in the phone book or visit <https://housing.ca.gov/>.
- Local tenant information and assistance resources, visit <https://housing.ca.gov/>.
- Local dispute resolution program. For a list, go online to [https://www.dca.ca.gov/consumers/mediation\\_programs.shtml](https://www.dca.ca.gov/consumers/mediation_programs.shtml).

You may also obtain information from the California Department of Real Estate at (877) 373-4542. You can also visit the Department of Real Estate's at <https://dre.ca.gov/>.

Many county bar associations offer lawyer referral services and volunteer attorney programs that can help tenants locate a low-fee or free attorney. Legal aid organizations may provide eviction defense services, including legal advice, information and representation, to low-income tenants. Some law schools offer free advice and assistance through landlord-tenant clinics.

Tenants should be cautious about using for-profit so-called eviction defense clinics or bankruptcy clinics that are not tied to attorneys or a local non-profit organization. While there are many free and low-cost services available through your local Court and non-profit organizations, there are certain businesses that hold themselves out to be clinics that are not legitimate or may be legitimate but costly. Exercise caution when any clinic uses high-pressure sales tactics, make false promises such as guaranteeing a favorable outcome, obtains your signature on blank forms, take upfront fees, and do not communicate with you about your case at all.

These clinics may promise to get a **federal stay** (also called an automatic stay) (also called an automatic stay) of an eviction action. This usually means that the clinic intends to file a bankruptcy petition for the tenant (see the discussion of filing bankruptcy on page 101). While this may stop the eviction temporarily, it can have extremely negative effects on the tenant's future ability to rent property or to obtain credit as the bankruptcy will be part of the tenant's credit record *for as long as 10 years*. Always do your research and consult an eviction defense attorney before filing any such petition, especially if a clinic is doing it solely for the purpose of delaying an eviction.

Tenants should distinguish between those who are licensed and in good standing to practice law in California versus someone who is a registered Unlawful Detainer Assistant or Legal Document Assistant. The latter can help with the completion of court forms but cannot give legal advice. Be sure to check that someone who claims to be an attorney is actually licensed to practice law in California. An attorney's license status can be checked at <http://members.calbar.ca.gov/fal/LicenseeSearch/QuickSearch>.

Unlawful detainer assistants (UDAs) are non-lawyers who are in business to provide advice and assistance to landlords and tenants on unlawful detainer issues. UDAs must be registered with the County Clerk's office in the counties where they have their principal place of business and where they do business.<sup>456</sup> A tenant who signs a contract with a UDA can cancel the contract within 24 hours after signing it.<sup>457</sup>

Legal document assistants (LDAs) are non-lawyers who type and file legal documents as directed by people who are representing themselves in legal matters. Similar registration and contract cancellation requirements apply to legal document assistants.<sup>458</sup>

The fact that a UDA or an LDA is properly registered with the County Clerk does not guarantee that the UDA or LDA has the knowledge or ability to help you. Anytime you are dealing with someone who holds themselves out as an LDA or UDA, be sure to ask for their registration information. UDAs are required to disclose their registration information on any legal pleadings they file with the Court.

Landlord and Tenants should also be cautious about using so-called Paralegal Services that offer to file documents with the Courts and representation in Court proceedings. Paralegals are non-lawyers who cannot engage in the practice of law, cannot appear in Court, and must be supervised and affiliated with a licensed attorney in order to provide any sort of legal

assistance or advice.<sup>459</sup> Unlike UDAs or LDAs, there is no required licensing or registration for paralegals. Many of these services will charge upfront fees and will do nothing, often to the detriment of the person they allege to be representing.

## ARBITRATION AND MEDIATION

Some local housing agencies refer landlord-tenant disputes to local dispute resolution centers or mediation services. The goal of these services is to resolve disputes without the burden, stress, and expense of going to court. Courts in California collect fees that are used to operate Alternative Dispute Resolution programs that are overseen by county governments. These mediation programs are typically available to parties to certain court actions, are free of charge, and can be accessed before a trial or even at the court house on the day of trial.

Mediation involves assistance from an impartial third person, called a **mediator**, who helps the tenant and landlord reach a voluntary agreement on how to settle the dispute. The mediator does not make a binding decision in the case, but instead facilitates the parties achieving their own agreement. Willingness to participate in mediation is entirely up to the discretion of any of the parties.

Arbitration involves referral of the dispute to an impartial third person, called an **arbitrator**, who decides the case. If the landlord and tenant agree to submit their dispute to arbitration, they will be bound by the decision of the arbitrator, unless they agree to nonbinding arbitration. Unlike mediation, which is usually available at no or little cost, arbitration often requires payment of significant fees to a professional arbitrator. The cost for arbitration is usually split equally by the parties, but a tenant could ask the landlord to bear a greater share of the cost, including the entire cost. It is a legally unsettled question as to whether a term of a rental agreement that requires a tenant to submit disputes to arbitration is in fact enforceable.

Tenants and landlords should consider resolving their disputes by mediation or arbitration instead of a lawsuit, if it is available to them and they have the financial means to participate in these programs. Mediation is almost always faster, cheaper, and less stressful than going to court. While arbitration is more formal than mediation, arbitration can be faster, and is usually less stressful and burdensome, than a court action. It is important for both parties to remember that a mediator/arbitrator is supposed to remain neutral and is not an attorney or advocate for either party, rather they are charged with trying to reach a resolution that is agreeable to both parties. Mediators and Arbitrators are also not always experts in the area of law, so it is important for both parties to be informed of their rights and obligations prior to entering into a mediation or arbitration.

Mediation services are listed in the commercial or advertising sections of the telephone book under *Mediation Services*. For a county-by-county listing of dispute resolution services, go online to [www.dca.ca.gov/consumers/mediation\\_programs.shtml](http://www.dca.ca.gov/consumers/mediation_programs.shtml).

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<sup>455</sup> Civ. Code §§ 1961, 1962 and 1962.5.

<sup>456</sup> Bus. & Prof. Code §§ 6400-6415.

<sup>457</sup> Bus. & Prof. Code § 6410(f). The contents of the unlawful detainer assistant's contract are governed by regulation. See 16 California Code of Regulations § 3890.

<sup>458</sup> Bus. & Prof. Code §§ 6400-6415. The contents of the legal document assistant's contract for self-help services are governed by regulation. See 16 California Code of Regulation, § 3950.

<sup>459</sup> Bus. & Prof. Code § 6125-6133, Bus. & Prof. Code §§ 6450-6456. These sections govern the unlawful practice of law and the duties that may be lawfully carried out by a paralegal.

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