

CHAPTER 9

EVICCTIONS

9000. Scope of Regulations

These regulations are designed to implement and clarify the just cause eviction requirements of §1806 of the Santa Monica City Charter. The authority for promulgation of these regulations derives from §1803(g) of the Santa Monica City Charter.

9001. Notice of Eviction

Any notice served upon a tenant to terminate a tenancy pursuant to §1806 shall contain a specific statement of the reasons for the termination with specific facts to permit a determination of the date, place, witnesses and circumstances concerning the reason for the eviction.

9002. Evictions Under §1806(a)(8)

(a) Definition of Landlord for Purposes of this Regulation.

- (1) Only a natural person who has at least a 50 percent ownership interest in a property shall be considered a landlord.
- (2) No corporation, partnership, limited partnership, trust company, as defined in California Financial Code, Section 107, or association shall be considered a landlord.

[9002(a) Amended 4/23/89; Effective 3/7/89]

[9002 Amended 05/6/04; Effective 06/03/04]

(b) Number of Allowable Evictions Under §1806(a)(8).

A "landlord" as defined in §9002(a)(1) may evict a tenant from a controlled residential rental unit for the use and occupancy of himself or herself or for one of the relatives enumerated in subsection (c) for one unit only on a given property.

- (1) A tenant evicted from a unit for owner or relative occupancy who subsequently re-occupies the unit may not again be evicted from that unit for owner or relative occupancy by that same owner for four years from the date of the first notice to vacate.
- (2) A tenant who has prevailed in a trial on the merits in an eviction for owner or relative occupancy may not have his or her tenancy terminated by that owner for owner or relative occupancy for four years from the date of judgment.
- (3) The landlord or enumerated relative must intend to occupy the unit as his or her primary place of residence.
- (4) If any landlord as defined in §9002(a)(1) or enumerated relative already occupies one unit on a property, no eviction pursuant to §1806(a)(8) may take place.
- (5) No eviction for this purpose is permitted if a vacancy exists on the property and the vacant unit is comparable to the unit for which eviction is sought.

[9002(b) Adopted 4/29/93; Effective 6/17/93]

[9002(b),(b)(5) Amended 05/6/04; Effective 06/03/04]

[9002(b)(3) Repealed 08/03/06; Effective 08/12/06]

(c) Persons for Whom a Tenant May Be Evicted.

A landlord may evict a tenant from a controlled rental unit if the landlord seeks to recover possession in good faith for the use and occupancy of herself or himself, or her or his children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

[9002(c) Amended 2/23/89; Effective 3/7/89]

(d) "Good Faith" Requirements.

This subsection illustrates, but does not exhaust, the factors to be considered in determining whether the landlord is evicting a tenant in good faith under §1806(a)(8).

- (1) A landlord is not acting in good faith if the landlord or enumerated relative for whom a tenant has been evicted does not intend to move into the unit within 30 days of the date that the tenant vacates the unit and does not intend to thereafter occupy the rental unit for a minimum period of one (1) year as his/her principal place of residence.
- (2) Where proof is presented that an ownership interest was granted for the primary purpose of qualifying a person as a landlord for purposes of eviction under §1806(a)(8), the landlord is not proceeding in good faith.
- (3) A landlord who has served an eviction notice on a tenant under §1806(a)(8) is not proceeding in good faith if the landlord has other vacant rental units in the property where the tenant currently resides or in any other residential rental property s/he owns in Santa Monica or the greater Los Angeles area, from the date of the notice to quit until the date of judgment of unlawful detainer and does not offer each of the available vacant units to the tenant being evicted. A vacant unit shall include any unit for which the landlord has received notice that a tenant intends to vacate and any unit which is being refurbished or repaired and is not currently rented.
- (4) A tenant who has been evicted pursuant to §1806(a)(8) shall have the right of first refusal for any unit vacated within one (1) year on the property from which the tenant was evicted, including the unit from which the tenant was evicted where the owner or relative does not subsequently move into it or subsequently vacates it. The landlord shall give such tenant written notice of any such vacant units, giving that tenant a reasonable time to decide whether to accept or reject the unit.
- (5) The court in making a determination regarding the presence or absence of good faith in an eviction should consider, along with any other factors deemed relevant: whether the tenant has recently reported violations of the Charter Amendment to the Board; whether the landlord has vacant rental units in other residential rental properties in the greater Los Angeles area; whether the landlord has previously attempted to evict these or other tenants; whether vacancies existed prior to service of the notice terminating tenancy, but at a time when the intent to evict was being formed; whether the tenant being evicted is paying a low rent in relation to other units on the property; whether the eviction is an attempt to move the tenant into a higher priced rental unit; and any additional relevant information.

[9002(d),(d)(2)(3)(4) Amended 05/6/04; Effective 06/03/04]

(e) Eviction Notice Requirements Under §1806(a)(8).

In an eviction pursuant to §1806(a)(8), the notice of termination of tenancy shall contain the name of the present tenant, the monthly rent currently charged, the name, relationship to landlord, and current home address of the person proposed to occupy the apartment. If the unit is a condominium or stock cooperative unit, the notice must include a copy of the removal permit, the vested rights declaration, or a final tract map recorded on or prior to April 10, 1979. The notice of termination of tenancy shall be filed with the Rent Control Board within three (3) days of service upon the tenant.

[9002(e) Amended 3/27/80; Effective 4/4/80]

[9002(e) Amended 05/6/04; Effective 06/03/04]

(f) If the individual specified in the notice terminating tenancy fails to occupy the unit as his or her principal place of residence within thirty (30) days after the tenant vacates, the landlord shall both:

(i) Offer the unit to the tenant who vacated it.

(ii) Pay to said tenant all reasonable expenses incurred in moving from and/or back to the unit. Such payment shall include, but not be limited to, reasonable payments to moving companies for local moves, utility deposits, storage costs, fees to agencies or individuals who provide services to locate apartments, and security deposits. If the landlord has already paid the tenant under the Relocation Ordinance to vacate, the amount of that payment shall be deducted from the sum required in this regulation.

[9002(f) Amended 8/12/82; Effective 9/3/82]

(g) If a vacancy occurs in any unit on the property within one year of the date that the tenant vacates his or her unit, the landlord shall offer the vacant unit to the tenant who was displaced.

(h) **Comparable Vacant Units.** A unit is comparable under section 1806(a)(8)(ii) if the square footage of the two units varies by no more than 15% and they contain the same number of bedrooms. Unit location and unit amenities shall not be considered in a determination of comparability unless the landlord demonstrates that the location of the tenant-occupied unit or an amenity found only in the tenant-occupied unit is required due to a documented medical need of the landlord or relative intending to move into the unit.

[9002(h) Amended 4/12/01; Effective 4/21/01]

[9002(h) Amended 05/6/04; Effective 06/03/04]

(i) The remedies provided by this regulation shall be in addition to other remedies provided in the last paragraph of §1806 or by other statutory or decisional law.

(j) A landlord shall not recover possession of a unit pursuant to Section 1806(a)(8) where there is a comparable unit occupied by a tenant who moved onto the property more recently than the tenant from whom the landlord seeks to recover possession, notwithstanding the existence of a rental agreement for a specific term between the landlord and the more-recent tenant. For purposes of this provision, "comparable unit" shall mean a unit of the same number of bedrooms, with square footage that varies no more than fifteen (15%) from the unit for which the landlord is attempting to recover possession. Unit location and unit amenities shall not be considered in a determination of comparability unless the landlord demonstrates that the location of the longer-term, tenant-occupied unit or an amenity found only in the longer-term, tenant-occupied unit is required due to a documented medical need of the landlord or relative intending to move into the unit.

[9002(j) Adopted 6/1/89; Effective 6/10/89]
[9002(j) Amended 4/12/01; Effective 4/21/01]
[9002(j) Amended 05/6/04; Effective 06/03/04]

9003. Retaliatory Eviction

If a landlord retaliates against a tenant because of the exercise by the tenant of his/her rights under the Charter Amendment, the eviction or attempted eviction shall be unlawful.

[9003 Amended 8/12/82; Effective 9/3/82]

9004. Post-Eviction Use Must Be for Residential Purposes Only

A landlord may evict a tenant under §1806 only if the use and occupancy of the rental unit is to be for residential purposes, unless the landlord has obtained a removal permit in accordance with §1803(t) of the Rent Control Charter Amendment, or a claim of vested rights pursuant to Chapter 6 of these regulations, or the landlord has filed the requisite documents with the Rent Control Board initiating the procedure for withdrawing rental units from rent or lease under Government Code §7060, et seq. and Chapter 16 of Board regulations.

[9004 Amended 05/6/04; Effective 06/03/04]

9005. Eviction for Purpose of Removal of Rental Unit

- (a) A landlord may not evict a tenant pursuant to subdivision (a)(9) of §1806 until the landlord has secured either a removal permit pursuant to §1803(t) of the Rent Control Charter Amendment, or a claim of vested rights pursuant to Chapter 6 of these regulations, or a non-residential rental exemption.
- (b) A landlord seeking to remove a controlled rental unit from the rental housing market who has not complied with subsection (a) above may not constructively evict a tenant by diminishing housing services, diminishing the tenant's rights under the rental agreement, or interfering with the use and enjoyment of the rented premises.
- (c) A landlord seeking to evict a tenant under subdivision (a)(9) of §1806, shall accompany the eviction notice with a copy of the Board's decision either granting a claim of vested rights under Chapter 6 of these regulations, granting a removal permit under §1803(t) of the Rent Control Charter Amendment.

[9005(a)(c) Amended 05/6/04; Effective 06/03/04]

9006. Exemption for Three Unit or Less Owner-Occupancy Required in Order to Evict For Reasons Other Than Those Listed in §1806

A landlord may not evict a tenant for reasons other than those set forth in §1806 of the Charter Amendment unless the landlord has applied for and received an exemption for owner-occupancy by the Board.

9007. Evictions Under Subsection 1806(a)(2) of the Rent Control Charter Amendment

- (a) No tenancy may be terminated for violation of a covenant of a rental agreement, other than the covenant to pay the lawful rent, unless that covenant was a result of an express agreement between the landlord and the tenant. An express agreement must be in writing, signed by both parties, and the tenant must have knowingly consented to the change. A landlord may not unilaterally change the terms of tenancy under Civil Code §827 and then evict the tenant for violation of the added covenant unless the tenant has agreed in writing to the additional covenant.
- (b) As used in section 1806(a)(2) of the Rent Control Charter Amendment, regarding termination of tenancy for violation of an obligation or covenant of a tenancy, an obligation or covenant of a tenancy is defined as a material and substantial term of the tenancy, violation of which the landlord has not waived either expressly or impliedly through conduct or which the landlord is not estopped from asserting.

[9007 Amended 4/6/89; Effective 4/12/89]

[9007 Amended 2/11/99; Effective 2/26/99]

[9007(b) Amended 05/6/04; Effective 06/03/04]

9008. Date of Application

This section shall apply to all eviction proceedings in progress as of the effective date of this revised Chapter, and to all eviction proceedings commenced thereafter. Governing Board of Rialto Unified School District v. Mann, 18 Cal. 3d 819, 135 Cal. Rptr. 526, 558 P.2d 1 (1977).

9009. Evictions Pursuant to 1806(a)(1) and (a)(2) - Earthquake Emergency

- (a) Numerous residential rent controlled buildings and units in the City of Santa Monica have been substantially damaged due to the January 17, 1994 Northridge Earthquake and its aftershocks. These buildings and units have been posted by the City's building inspectors with notices of uninhabitability prohibiting entry ("red tags") or limiting entry ("yellow tags"). Red- and yellow-tagged buildings may not be occupied.
- (b) The Board finds that the determination by the City that a unit is not habitable by virtue of a red or yellow tag is prima facie evidence of its uninhabitability pursuant to Civil Code Section 1941, et seq.
- (c) Therefore, any tenant of a rental unit that has been deemed uninhabitable by the City of Santa Monica by virtue of a red or yellow tag shall not be evicted for failure to pay rent due on or after January 17, 1994, pursuant to Sections 1806(a)(1) and (a)(2) of the Charter (as it relates to any obligation or covenant to pay rent) during any period in which the red or yellow tag remains in effect.

[9009 Adopted 1/27/94; Effective 2/16/94]

[9009(c) Amended 05/6/04; Effective 06/03/04]

9010. No Evictions for Violating Santa Monica Municipal Code Section 4.44.040 Which Prohibits Smoking in Multi-Unit Common Areas

- (a) Santa Monica Municipal Code ("SMMC") section 4.44.040 regulates smoking in common areas of multi-unit residential properties by providing a private right of action against an individual who smokes in a common area. Multi-unit common area is defined in SMMC section 4.44.010 as: "Any indoor or outdoor area that is multi-unit residential property (including rental properties and

condominiums) that is accessible to and usable by the occupant of more than one unit, including but not limited to halls, walkways, lobbies, laundry rooms, common cooking areas, outdoor dining areas, patios, play areas, swimming pools, gardens, and parking lots.”

- (b) SMMC section 4.44.040(a) states as the sole remedy a private right of action. Violators are not subject to criminal penalties.
- (c) SMMC section 4.44.040(c)(1) expressly states that “Nothing in this section may be used as grounds to terminate a tenancy. Nothing in this section shall render smoking in Multi-Unit Common Areas a violation of law pursuant to any rental housing agreement.”
- (d) No violation of SMMC section 4.44.040 shall be used as grounds to terminate a tenancy under section 1806.
- (e) This regulation does not affect existing grounds for eviction as set forth in section 1806.

[9010 Adopted 4/23/09; Effective 5/1/09]

[Chapter 9 Adopted 9/6/79; Effective 9/18/79]

[Chapter 9 Amended 9/23/82; Effective 9/30/82]

[Chapter 9 Amended 9/1/83; Effective 9/10/83]

[Chapter 9 Amended 4/13/89; Effective 4/23/89]

[Chapter 9 Amended 2/11/99; Effective 2/26/99]

[Chapter 9 Amended 4/12/01; Effective 4/21/01]

[9002 Amended 05/6/04; Effective 06/03/04]

[9002(b)(5) Amended 05/6/04; Effective 06/03/04]

[9002(d)(2)(3)(4) Amended 05/6/04; Effective 06/03/04]

[9002(e) Amended 05/6/04; Effective 06/03/04]

[9002(h) Amended 05/6/04; Effective 06/03/04]

[9002(j) Amended 05/6/04; Effective 06/03/04]

[9004 Amended 05/6/04; Effective 06/03/04]

[9005(a)(c) Amended 05/6/04; Effective 06/03/04]

[9007(b) Amended 05/6/04; Effective 06/03/04]

[9009(c) Amended 05/6/04; Effective 06/03/04]

[9002(b)(3) Repealed 08/03/06; Effective 08/12/06]

[9010 Adopted 4/23/09; Effective 5/1/09]