

RCFEs: Eviction Protections For Residents

Residents have rights and protections against eviction actions.

Causes for Eviction

Current laws and regulations recognize **ONLY five (5) reasons for eviction:**

- **Failure of resident to pay** agreed upon rate for basic services within ten (10) days of due date.
- **Failure of resident to comply with state or local law** after receiving notice of the alleged violation, (e.g., drug use, assault, violation of probation, etc.).
- **Failure of resident to follow facility policies** that are in writing, are part of the Admission Agreement and are for the purpose of making it possible for residents to live together.
- After formal assessment, **the facility determines that it can no longer meet the resident's changing care needs.**
- **The facility changed its purpose.**

Please note that a resident may *not* be evicted for refusing to sign a new admission agreement.

Please also note that it is illegal for an owner or employee of an RCFE to evict or threaten eviction of a resident in retaliation for the resident requesting an inspection or filing a complaint against the facility with the Department of Social Services or the Ombudsman Program.

Written Notice & Documentation Requirements

Generally, the facility is required to give a 30-day written notice to evict. If the resident has lived in the facility for more than one year, it is CANHR's position that the RCFE must give 60 days written notice (Civil Code Section 1946.1(b)), but the state licensing agency disagrees.

The notice must be delivered to the resident, to their agent or legal representative and to the licensing agency. The notice must contain the following elements:

- Reason or reasons for eviction, i.e., one or more of the 5 reasons stated above;
- Specific facts pertaining to each reason for eviction, e.g., dates, places, circumstances surrounding the event(s) and identification and statements of witnesses;
- The effective date of the eviction;
- A list of resources available to assist in identifying alternative housing and care options, including public and private referral services and case management organizations;
- Information about the resident's right to file a complaint with the department regarding the eviction, with the name, address, and telephone number of the nearest office of community care licensing and the State Ombudsman; and
- The following statement: "In order to evict a resident who remains in the facility after the effective date of the eviction, the residential care facility for the elderly must file an unlawful detainer action in superior court and receive a written judgment signed by a judge. If the facility pursues the unlawful detainer action, you must be served with a summons and complaint. You have the right to contest the eviction in writing and through a hearing."

There are some **exceptions to the 30-day notice requirement**. However, a written notice is still required except when the licensing agency orders an urgent or immediate relocation due to a finding that the resident is in imminent danger and requires inpatient care.

- **3-Day Eviction** will sometimes be granted to the facility by the licensing agency when the resident is demonstrating behavior that threatens the mental and/or physical health and safety of the resident or other residents.
- **Health Relocation Order** issued by the licensing agency when the resident's condition is prohibited from being treated in a Residential Care Facility for the Elderly, e.g., Stage 3, open bed sore. The notice of relocation is sent to the facility, resident and/or resident's responsible person, and the Long Term Care Ombudsman Program stating the reasons for the order and the right to appeal the decision.
- **Facility will no longer be operating as an RCFE.** When the alleged reason for an eviction is "change of use of the facility," the facility is required to give residents a **60-day written notice**. (See Health & Safety Code section 1569.682(a)(2); 22 CCR 87224(a)(5)(A)(1).) In addition to the notice requirements discussed above, the notice must be made to the resident or the resident's responsible person and include the additional requirements specified in Health & Safety Code section 1569.682(a)(2)(A)-(F).
- **Facility closure** when residents are evicted requires a **60-day written notice**. (See CANHR's Fact Sheet "RCFE Closures: Residents' Rights and Protections" for more details about closures.)

Readmission After a Hospital Stay

RCFEs may not refuse to readmit a resident following a stay in a hospital. If the facility believes that one of the five reasons for eviction is satisfied, it must nonetheless readmit the resident until it has complied with all of the legal eviction procedures.

Can a New Owner Require Me to Sign a New Admission Agreement?

No. Be aware that new owners often ask residents to sign new admission agreements with unfavorable terms. By law, the new owner takes the facility subject to your currently existing admission agreement. The existing agreement is not terminated by the sale of the facility. The new owner may not take an adverse action against you for refusing to sign a new admission agreement.

SSI Residents and Evictions

Private paying residents of RCFEs cannot be evicted if they later qualify for Supplemental Security Income (SSI). It is common for low-income RCFE residents to qualify for SSI when they spend down their savings below \$2,000, the asset limit for SSI. If an RCFE resident qualifies for SSI and is approved by the Social Security Administration, the facility should lower its rate for basic services to \$1069.37. See CANHR's fact sheet on SSI in Residential Care Facilities for more information about eligibility and related issues.

In some cases, an RCFE will claim that it is not an "SSI facility," and will continue to bill the resident at the private pay rate. However, there is no such thing as an SSI facility in California. A California regulation that applies to all RCFEs establishes a limit on charges to SSI recipients. This regulation states: "If the resident is an SSI/SSP recipient, then the basic services shall be provided and/or made available at the basic rate at no additional charge to the resident." (Section 87464(e) of Title 22 of the California Code of Regulations)

However, be on the alert when care needs increase. SSI recipients are more vulnerable than private paying residents for eviction in this situation.

Protections

Because of the seriousness of eviction proceedings and the potential for harm to residents, it is advisable to **seek assistance from the Long Term Care Ombudsman Program and/or Senior Legal Services.**

Use the approaches listed below carefully. Make sure that the resident's continuing care needs will be met throughout the process. It can be very detrimental to residents to remain in facilities that are either unable or unwilling to meet the resident's care needs.

- Do not act on a verbal statement by the facility that the resident must move. **Demand a written notice.**
- **Make sure that the notice for eviction meets all the legal standards**, i.e. states one of the five reasons for eviction and provides necessary documentation. If not, the eviction is not valid and the notice must be reissued. This buys time for the resident to consider other options.
- **Challenge unreasonable facility policies** as a basis for eviction.
- Remedy the cause stated for the eviction, e.g., pay the monthly fee or comply with the house rules. Then insist that the eviction be withdrawn.
- **Insist on a written relocation plan** to ease the transition and to reduce transfer trauma. Negotiate for more time to make a good relocation plan.
- **File a complaint with the licensing agency** over the process used by the facility.
- **Make an appeal of the licensing agency's health relocation order.** The appeal must be requested within 3 business days of the notice. Licensing's decision will be reviewed by an independent team.
- **Exercise the right to a judicial hearing.** In order to evict a resident, the facility must go to court first and get an order from a judge. An eviction from an RCFE is legally the same as an eviction from a house or an apartment. (Civil Code Section 1940(a)) The resident must be served with a summons and complaint and has the right to contest the eviction in writing and through a hearing.
- **Assert rights when facility closes** for a 60-day written notice, relocation evaluation (and relocation plan approved by licensing when 7 or more residents are affected), proportional refund of prepaid month's rent and of pre-admission fees over \$500 paid in the past two years, file a complaint with licensing, and exercise the right to file a civil lawsuit covering costs and attorney's fees. Note: The licensing agency has the right to issue daily fines per violation of residents' relocation rights to produce facility compliance.

These rights are found in California Law: California Civil Code Sections 1940 and 1946.1; Health & Safety Code Sections 1569.37, 1569.54, 1569.73, 1569.682 and 1569.683; and in California Code of Regulations, Title 22, Division 6, Sections 87224 and 87612.