



## TOP 10 LEGAL MISTAKES MADE BY RESIDENTIAL LANDLORDS

There are only two types of residential investment property owners: those who have legal problems, and those who will. Whether that day is today or in the future, a landlord needs to know what pitfalls they will likely face... and how to avoid them.

### 1) Using the “Wrong” Lease.

Still too many California landlords are using lease templates that are not California specific. What is legal in Texas may not be legal in California. Common “tenant friendly” (read, anti-landlord) laws in California include a prohibition on late fees, limitations on how much of a security deposit is allowed, and a strict deadline for the return of those deposits. Worse, some municipalities have even more stringent requirements than those statewide.

### 2) Not Having a Custom Lease.

Even if you do use a California specific lease template, it may not address all the facts and circumstances of your custom situation. For example, your property may have a special feature that requires observation and/or maintenance by the tenant, or you may want to require the tenant to carry renter’s insurance and name you as an additional insured. The latter can keep the landlord’s premiums down. Every lease should be reviewed by an experienced attorney to verify the right clauses are in, and that illegal clauses are out.

### 3) Not Requiring Certified Funds for the Initial Rent and Security Deposit.

Ronald Reagan’s famous quote: “Trust, but verify” applies to new tenants even more so than the old Soviet empire. If the tenant pays their initial rent and security deposit with a check and it bounces, you have zero security deposit and the tenant still gains possession in most cases. Regardless of the tenant’s credit, always require a cashier’s check or money order for their initial payment.

### 4) Serving a Defective 3-Day Notice.

When a tenant doesn’t pay, you need to get them out, and now. Unfortunately, if any portion of your 3-day notice is the least bit non-compliant, it is deemed defective and cannot successfully support an unlawful detainer action. Common examples of non-compliance are: a) including late fees in the rent demanded; b) failing to specify the

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the address, phone number, and hours where the rent can be paid; and c) failing to include an election of forfeiture.

### **5) Having the “Wrong” Person Serve Your 3-Day Notice.**

When you serve a 3-Day Notice to Pay or Quit, you are hoping the tenant pays, but still must be prepared to go to court if they don't. At trial, the person who served the 3-Day Notice must testify in person that they did so (a mere signature on the notice is inadmissible hearsay). If one person “nailed” and another person “mailed” the notice, both have to testify. If this person (or people) are casual friends, are you certain they will show up at trial? For this reason, the 3-Day Notice should only be served by: a) the property owner who will make trial testimony a top priority; b) A trusted property manager (not an assistant) who will unconditionally testify at trial; or c) A registered process server. A registered process server's declaration creates a rebuttable presumption in court that the notice was served. “Rebuttable” means strong but not bulletproof. So, if you have a shyster tenant with means to hire an attorney, you may still want the process server there at trial.

### **6) Accepting Rent After the Notice Period Expires.**

The 3-day notice period expires on the first non-holiday weekday that is four days after the notice is served. For example, the notice is served on Wednesday (the service day doesn't count) so your “three days” are really Thursday, Friday, and Saturday. However, because the “last” day can't be a weekend, the last day for the tenant to pay rent will be Monday. If heaven forbid Monday is a holiday, then the “last” day is Tuesday. If you accept any rent after that “last” day, it resets the notice period, meaning you have to now serve a revised notice with a revised dollar amount.

### **7) Commencing an Unlawful Detainer In Pro Per.**

With very few exceptions, even experienced landlords make a mess of their own unlawful detainer (“UD”) cases. Unlike ordinary civil suits where “close like horseshoes” is OK, in UD cases the landlord must dot every “i” and cross every “t” properly, or they lose.

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### 8) Hiring a “Chop Shop” Law Firm for a UD Case.

A few law firms advertise (seemingly) low, flat fee UD services. The only way they can make their business model pencil out is for a legal secretary to do all the real work, and then an attorney merely does a cursory review before signing. If you have a weak tenant who doesn't bother to respond to anything, you might get lucky. However, if the tenant files an Answer and fights, the chop-shop law firm just lost money on you. Your case then goes to the bottom of the pile and gets only minimal attention. What have you gained? More lost rent. Worse, some firms will even try to convert their billing on a difficult case to an hourly basis...after they have already collected their flat fee.

### 9) Forcible Entry (taking the law into your own hands).

California has severe penalties for landlords who unlawfully enter the tenant's premises (or worse, take possession without a court order). No matter how bad the tenant's actions, no matter how much rent they owe, you can only evict a tenant through lawful means, and that requires an unlawful detainer action in court. If crimes are being committed on your property, call the police and call your attorney... don't try to put on a shiny badge or a black robe you are not authorized to wear.

### 10) Refusing to Settle a UD Case (offer “Cash for Keys”).

OK, you're deep in a UD case, the tenant has filed an answer alleging bogus habitability defenses, and trial is next week. Understand the tenant is doing this for only one reason: they have no money and therefore can't afford to move anywhere. Even if you get a writ of possession and a kick out order in two or three weeks, what shape will the property be in? The smarter move is to swallow your pride, offer the tenant cash if they move out peacefully, and be done with them. A deadbeat tenant is not collectible, so what would you really win by going to court?

While most tenants are good people who take care of the property they rent, there are enough of bad apples out there. Even good people fall on hard financial times, and then desperate people do desperate things. Landlords need to remain vigilant to protect themselves and their property. The time to establish a solid relationship with an experienced landlord-tenant attorney is when things are calm...not when you're under pressure.

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