

INSTRUCTION SHEET (Form 2.1)

Lease Agreement

Purpose:

The purpose of this form is to clearly state the terms agreed to by both the property owner/agent and the resident (renter). When properly completed and signed by both parties, it becomes a binding and legally enforceable contract. Two agreements are available: Rental Agreement Month-to-Month (Form 2.0) and Lease Agreement (Form 2.1). This instruction sheet is for the Lease Agreement, Form 2.1.

When to Use:

1. Always use a written rental agreement. Protect your rights and set forth the responsibilities of the Resident by using one of the rental agreements.
2. Get the forms prepared and signed by all parties before you give the Resident the keys. Usually the agreements are signed after you have reviewed and approved the prospective Resident's application and at the same time you are receiving the initial rent and deposit money due you.
3. Use a Lease Agreement (Form 2.1) when you are leasing the unit out for a specific period of time (usually one year, but it could be set up for any longer or shorter time period).
4. Use the Rental Agreement (Month-to-Month) (Form 2.0) in all other situations.

Preparation of the Form:

Heading: List the effective date, name, address and telephone of Owner/Agent, and full and complete names of all adults who are going to reside in the premises. Civil Code Section 1962 requires disclosure of (1) the person who is authorized to accept service of process and notices (See Paragraph 9), and of (2) the person or entity to whom rent payments are to be made (See Paragraph 2).

Par. 1 (**Rental Unit**): Show physical address of property being rented - include apartment number and zip code.

Par. 2 (**Rent**): Show rental amount and dates. Use the standard rent due date (such as the 1st), even if Resident is moving in mid-month. **WARNING: If a due date is not specified, rent is not due until the end of the month.** Specify the person/entity to whom the rent is to be paid, i.e., to whom the resident should make out the check. Specify the person to whom the rent is to be delivered (this may be the same or different than the person it is "payable to"). Specify the address and phone number where rent payments should be delivered (i.e. "123 Main Street, Unit 4, Sacramento, CA 95814" or "PO Box 1234, San Francisco, CA 94101"). If payments are accepted in person, indicate the hours and days the specified person is available to accept them. If not, put "N/A" in the spaces for the hours. If the hours vary from day to day, specify them in the space marked "Other". If you do not allow for personal delivery of rent payments, the rent is deemed received on the date posted, if the Resident can show proof of mailing to the address provided.

Fill in the date the tenancy will begin. This is the same date you will place in the blank for "beginning on" in Par. 5 (Term).

If the tenancy does not begin on the usual rent due date, you may charge a full month's rent at move-in and then the prorated amount for the remaining days on the usual rent due date. For example, if it starts on April 15th, and rent is usually due on the first, you would charge a full month's rent at move-in on April 15th and then, require the resident to pay 15 days prorated rent on the first of May. CAA's form 13.0-MF can be used to calculate prorated rent. On the third line, fill in the usual rent amount and the due date for the first regular rent payment.

Indicate the acceptable methods of payment. If no boxes are checked here, all forms of payment are deemed acceptable. You may **not** select only cash or only electronic funds transfer (or only cash **and** electronic funds transfer) as the exclusive form(s) of payment. For more information, see CAA Issue Insight "*Payment of Rent and Security Deposits: Cash and Electronic Funds Transfer.*"

Note: If you intend to apply a tenant's rent or other payment to an earlier amount past due, careful recordkeeping is essential. An inaccurate Three-day Notice can be thrown out by the court. If the tenant's check contains a notation of what it is for, i.e. "November Rent", please consult with your attorney prior to applying this to earlier past due amounts.

Par. 3 (**Late Fees and Insufficient Funds**): Fill in any late charge you may assess when rent is not paid on the due date. Be sure that the amount of your late charge is reasonable to cover costs associated with late payment by Resident. Recent legal cases have challenged late fees, especially those that appear to induce timely rent payment or penalize Residents. For more information on late fees, see CAA's White Paper "*Residential Rental Payment Late Fees*".



If you have a charge for checks passed on non-sufficient funds (NSF), indicate that amount here. Again, the amount must be reasonable and approximate the losses incurred by the Owner/Agent when a check is passed on insufficient funds. Civil Code 1719 probably provides a safe harbor if the amount does not exceed \$25 for the first incident and \$35 for subsequent incidents.

Par. 4 (Security Deposit): Show amount of Security Deposit after “\$.” Check one of the boxes to specify the deadline for payment of the deposit. Within a reasonable time after notification of either party’s intention to terminate the tenancy, the Owner/Agent must give Resident the opportunity to request an inspection of the unit and must give the Resident the opportunity to be present. The purpose of the inspection is to identify deficiencies and cleaning necessary for the return of the security deposit. No later than 21 calendar days after Owner/Agent has regained possession of the premises, Owner/Agent shall furnish Resident with an itemized written statement of the basis for, and the amount of, any security deposit received and the disposition of such security deposit and shall return any remaining portion of such security deposit to Resident. An agreement to deposit the funds electronically cannot be made until either the Owner/Agent or the Resident has provided notice of termination. CAA Form 18.3 Security Deposit Disposition Agreement can be used for that purpose. See CAA’s Issue Insight – *Security Deposits: Collection and Return*.

Domestic Violence and other Special Circumstances: California law allows a tenant who is the victim of domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse, to get out of his or her rental/lease agreement. It does not however, require the owner to return the deposit until the unit is vacated. See CAA’s Issue Insight – *Domestic Violence & Human Trafficking*.

Par. 5 (Term): Enter the term of the Agreement (e.g. 1 year) and the beginning date “Tenancy start date” from Par 2. (Rent) and ending date of the term.

Par. 6 (Rental Unit Availability): If the unit is not available as planned, please consult with an attorney. This provision limits a prospective resident’s damages when the unit is not available due to circumstances beyond the Owner/Agent’s control, such as a previous resident holding over, or construction delays in a new property. This provision does not apply if a delay in availability is Owner/Agent’s fault or if the Owner/Agent simply wishes to cancel a signed rental agreement, for example if another applicant offers a higher rent.

Par. 7 (Utilities): List the utility service charges which you pay (i.e. garbage, hot water). Check off the utilities you require the resident to have connected. Civil Code Section 1040.9 requires a written agreement with the tenant if the tenant’s meter covers areas other than the tenant’s unit. Form 2.2 (blank addendum) can be used for this purpose.

Par. 8 (Cash Payments): California law provides that an Owner/Agent may not demand or require cash as the exclusive form of payment of rent or deposit of security unless the Resident has previously attempted to pay the Owner/Agent with a check drawn on insufficient funds or the Resident has stopped payment on a check, draft, or money order. This provision allows you to demand cash payments for up to three months in those circumstances. Use CAA Form 33.0 to provide the mandatory written notice demanding cash when a Resident’s check bounces. For more information see CAA’s Issue Insight – *Payment of Rent and Security Deposits: Cash and Electronic Funds Transfer*.

Par. 10 (Agent for Service of Notices and Process): Specify the person who is the agent for service of legal process and for any notices from the Resident, such as the notice of termination. A post office box cannot be used as an address for service of process. Private boxes at “mail” stores can be used, if an employee will accept service on behalf of the box holder.

Par. 11 (Occupants): List names and birth dates of all people who will normally live in the unit. Check the Application to Rent for how signature is written (i.e. - middle initial or full middle name used, etc.) and be sure that all signatures agree with the names shown. (Be accurate - any persons on the premises but not listed on the Agreement can only be a guest or trespasser and your rights change accordingly).

Par 12 (Guests): You may set reasonable limits on the length of time guests may stay with a tenant. California law does not specify how long a guest may stay in a tenant’s rental unit, so it is important to place a limit in the rental agreement, so that they do not become occupants with legal rights. Restrictions based on the age or sex of the occupant or guest, or based on the religious or moral views of the owner are illegal. If it appears that a guest has overstayed the time limit, has begun getting mail, or has moved in furniture, etc., it is important to take action as soon as possible. For more information see CAA’s Issue Insight “When does a Guest Become a Resident?”

Par. 15 (Prohibitions): List any other excluded items which you do not allow in your units without your permission. Use CAA Form 13.0 to allow a pet and CAA Form 35.0 to allow charcoal burners or other open-flame cooking devices, or liquefied petroleum gas fueled cooking devices (“grills”). Note that some local ordinances restrict the use of grills within a certain number of feet from a flammable structure. Contact your local association to determine if such requirements apply in your area. California law requires you to allow clotheslines/drying racks in certain limited circumstances, see CAA Form 62.0 and



Par. 16 (**Quiet Enjoyment**): Check with your local CAA association for information regarding local noise ordinances.

Par. 17 (**Parking**): Additional and more specific rules regarding parking may be imposed using an addendum. CAA's blank addendum can be used for this purpose. Please have any addendum terms reviewed by your attorney before attaching them to your rental agreement. For more information about towing vehicles, please see CAA's Issue Insight "Towing Vehicles from Residential Property."

Par. 18 (**Smoking Prohibition**): If you do not attach an addendum that allows smoking, this provision prohibits it on all areas of the property, including in individual units. If you allow smoking in some areas or units, but not others, check the first box, and attach the Smoking Policy Addendum (CAA Form 34.0). Many local ordinances restrict smoking on residential rental properties and require the use of an addendum. Please contact your local association to determine if such requirements apply in your area. In most cases, CAA Form 34.0 will meet the requirements of the local ordinance.

Understand that whether or not an owner chooses to prohibit smoking there may be legal consequences. Since this is a new trend in California's rental housing industry, the rights and obligations of Owners and Residents have not yet been litigated to the extent that there is legal precedent. For example: smoke drifting into a non-smoking resident's unit may result in a complaint regarding violation of the implied covenant of quiet enjoyment, whether or not a non-smoking policy is in place. Having a non-smoking policy may raise your resident's expectations and your duty to respond, resulting in possible legal action if it is not enforced. For more information about developing and enforcing non-smoking policies, see CAA's website.

Par. 22 (**Repairs and Alterations**): Note: that a resident's request for a reasonable accommodation or to make a reasonable modification is not governed by this provision. For more information see Member Services>Knowledge Base> on CAA's website www.caanet.org.

Par. 25 (**Landscaping**): Indicate by checking the appropriate box whether or not the Resident is responsible for maintenance of the yard and landscaping. You may also check the addendum box if you wish to specify additional, or different responsibilities. CAA Form 2.2 Addendum to Rental/Lease Agreement can be used for this purpose. See CAA's Personal Agriculture Addendum (CAA Form 49.0) and Issue Insight for more information.

Par. 26 (**Smoke Detection Device**): If you prefer, you may use a separate and more specific Smoke Detector Addendum (Form 27.0), which becomes part of this Agreement.

Par. 27 (**Carbon Monoxide Detection Device**): If you prefer, you may use a separate and more specific Carbon Monoxide Detector Addendum, (Form 27.1) which becomes part of this Agreement.

Par. 30 (**Renters Insurance**): Indicate by checking the appropriate box, whether or not you require the Resident to obtain Renter's Insurance and specify the deadline by which the Resident must provide proof, if applicable. If you do require insurance, CAA Form, 12.0-MF Renters Insurance Addendum should be used to provide details. CAA recommends the use of that addendum, even if you do not require insurance, as it provides useful information, and strongly encourages the Resident to obtain coverage.

Par. 31 (**Entry**): Owner/Agent or their agents or employees may enter the dwelling unit only in the following cases:

- (a) in case of emergency;
- (b) to make necessary or agreed repairs, decorations, alterations; or improvements, or to supply necessary or agreed services;
- (c) to exhibit the dwelling unit to prospective or actual purchasers, mortgagees, residents, workers or contractors;
- (d) when the Resident has abandoned or surrendered the premises;
- (e) to inspect a waterbed or bedding filled with liquid filling material, as those terms are used in Civil Code Section 1940.5;
- (f) to inspect any area where the tenant is engaging in personal agriculture pursuant to Civil Code Section 1940.10;
- (g) to install, repair, test, and/or maintain the smoke detector;
- (h) pursuant to court order; and
- (i) to perform an initial inspection as requested by the Resident no earlier than 2 weeks prior to termination of the tenancy.

Except in cases of emergency or when the Resident has abandoned or surrendered the premises, the Owner/Agent or their agents or employees shall give the Resident reasonable notice in writing of their intent to enter and may enter only during normal business hours, unless the Resident consents at the time of entry. Twenty-four hours is presumed reasonable notice, if the written notice is personally delivered to the Resident, left with someone of a suitable age and discretion at the premises, or, left on, near, or under the usual entry door of the premises in a manner in which a reasonable person would discover the



notice. If the notice is mailed to the Resident, mailing of the notice at least six days prior to an intended entry is presumed reasonable notice.

For more information about abandonment, see CAA's White Paper – *Abandonment of Real and Personal Property* available at www.caanet.org.

The Owner/Agent is not required to provide a written notice of entry to the Resident if the Owner/Agent and Resident have agreed orally to an entry to make agreed repairs or supply agreed services. The agreement shall include the date and approximate time of the entry, which shall be within one week of the agreement.

If the purpose of the entry is to exhibit the dwelling unit to prospective or actual purchasers, the notice may be given orally, in person, or by telephone, if the Owner/Agent or their agents or employees has notified the Resident in writing within 120 days prior to the oral notice that the property is for sale and that Owner/Agent or their agents or employees may contact the Resident orally for the purpose described above. Twenty-four hours is presumed reasonable notice. At the time of entry, Owner/Agent or their agents or employees shall leave written evidence of the entry inside the unit.

As of January 1, 2011 the Owner/Agent has the right to enter the unit to install, inspect and maintain carbon monoxide detectors. The Owner/Agent must install a carbon monoxide device, approved and listed by the State Fire Marshal, in each existing dwelling unit having a fossil fuel burning heater or appliance, fireplace, or an attached garage, within the earliest applicable time period as follows: (1) For all existing single-family dwelling units intended for human occupancy (tenant or owner-occupied) on or before July 1, 2011; (2) For all other existing dwelling units intended for human occupancy on or before January 1, 2013.

For more information about "Personal Agriculture" see CAA's Issue Insight – *Personal Agriculture*.

Par. 33 (Destruction of or Damage to the Premises): If you believe the premises are only partially damaged or temporarily uninhabitable, or if the destruction or damage was caused by the Resident, please consult with your attorney.

Par. 35 (Notice): Notice regarding Sex Offender database and Website: This statement is statutorily required in all rental/lease agreements in California.

Par. 38 (Addenda): Use this section to add any additional terms to the basic rental agreement. Check applicable boxes to indicate which additional terms have been added to the Agreement. Have Resident(s) initial below the list of addenda. Recommended and required addenda:

Asbestos Addendum (Form 17.1) - recommended if your property was built before 1981.

Bedbug Addendum (Form 36.0) - recommended for all tenancies.

CC&Rs Addendum (Form 2.9) – **required** if the property is located within a common-interest development. CC&Rs must be attached as well.

Carbon Monoxide Detector Devices (Form 27.1) - recommended if paragraph 17 of the Rental Agreement does not meet your needs.

Clothesline/Drying Rack Addendum - For use when Resident is allowed by law to use a clothesline/drying rack.

Day Care Addendum (Form 28.0) - recommended if the Resident will be operating a family day care home.

Furniture Inventory (Form 16.1) - recommended if unit is furnished.

Grilling Addendum (Form 35.0) - recommended if Owner/Agent allows the use of charcoal burners or other open-flame cooking devices, or liquefied petroleum gas fueled cooking devices.

Guarantee of Rental/Lease Agreement (Form 41.0) - recommended if a guarantor is used.

Lead-Based Paint Addendum (Form LEAD1) - required if your property was built before 1978. Also documents the required distribution of the lead pamphlet

Mold Notification Addendum (Form 2.7) - recommended for all tenancies.

Move In/Move Out Itemized Statement (Form 16.0) - recommended for all tenancies to help when determining and proving deductions from security deposit at the end of the tenancy.

Personal Agriculture Addendum – For use when Resident is allowed by law to engage in personal agriculture.

Periodic Application by Pest Control Operator Addendum (Form 61.6) - **required** when Owner/Agent has contracted for periodic pest control.

Periodic Application of Pesticides by Owner/Agent to Common Area Addendum (Form 61.4) – For use when the Owner/Agent is engaging in periodic application of pesticides in a common area, to notify incoming Resident.

Pet Addendum (Form 13.0) - recommended if Owner/Agent allows pets.

Political Signs Addendum (Form 39.0) – recommended if Owner/Agent wishes to limit Resident's ability to display political signs on the property.

Pool Rules Addendum (Form 15.0) - recommended if property has a pool.

Prop. 65 Brochure (Form PROP65BROCHURE) - **required** if your company or partnership has 10 or more employees.



Renters Insurance Addendum (Form 12.0-MF) - recommended for all tenancies.

Resident Policies Addendum (Form 17.0) - recommended for all tenancies.

Satellite Dish and Antenna Addendum (Form 2.5) - recommended if Resident wishes to install or have installed a satellite or antenna system on the property.

Smoke Detector Addendum (Form 27.0) - recommended if paragraph 16 of the Rental Agreement does not meet your needs.

Smoking Policy Addendum (Form 34.0) – required if you allow smoking on any part of the property. May also be required by local ordinance.

Spare the Air Addendum (Form 37.0) – to be used if your local jurisdiction has wood or solid fuel burning restrictions.

Unlawful Activity Addendum (Form 2.4) – recommended for all tenancies.

Water Conservation Addendum (Form 40.0) – to be used if your local jurisdiction has water use restrictions.

Waterbed Addendum (Form 14.0) - recommended if Resident has a waterbed.

Par. 40. (**Attorneys' Fees**): This form “defaults” to the option for the prevailing party to recover attorneys’ fees. If you do not want the prevailing party option, check the appropriate box for (a) attorneys’ fees to be limited to a specified amount; or (b) each party pays for their own attorneys’ fees, should legal action be required. Although the argument for and against attorneys’ fees clauses continues, some members in certain parts of the state find that they are targeted by “eviction delay” attorneys who contest evictions, sometimes in expensive jury trials, specifically because the Agreement contains a prevailing party type attorneys’ fees clause. Other areas of the state experience no such adverse effects and actually prefer to retain the prevailing party option. . If you choose the prevailing party option, consult with a local attorney to determine an appropriate fee cap based on fees charged in your area, as well as, the likelihood of aggressive tenant legal defense.

Signatures: It is strongly recommended that all adult occupants sign and date the Agreement, in addition to you or your agent.

Copies and Distribution:

1. Always keep the signed original as your copy.
2. Always provide the copies to all other parties signing the Agreement.
3. California law requires that the Owner/Agent must provide a copy of the executed Rental/Lease agreement to the Resident within 15 days of its execution by the Resident.
4. Once each calendar year, upon request by the Resident, the Owner/Agent must provide an additional copy to the Resident within 15 days of the request.

Pitfalls and Precautionary Notes:

1. More cautions about late charges:
 - (a) Do not allow your residents to pay the rent several days past the due date without imposing the late charge. Enforce the imposition of applicable late charges equally to all residents;
 - (b) Do not include late charges in a “3-Day Notice to Pay Rent or Quit” as it is not “rent.”
2. A Lease Agreement becomes a “Month-to-Month” agreement only if you agree to accept rent from the resident after the termination date of the lease. Communicate with Residents prior to the expiration of their lease. If they plan on moving, you will have advance notice of the pending vacancy.
3. This form has been prepared by the California Apartment Association to help members comply with applicable California and Federal law. The California Apartment Association, its local Chapters, and Divisions do not make any representation or warranty about the legal sufficiency or effect of this form. Consult with an attorney if you require assistance in completing the form or to determine if use of the form is appropriate or changes to the form are necessary in any particular situation.
4. The California Apartment Association does not sanction any CAA form which has been altered or changed in any way.

