

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Defending California's Licensed Facility Residents From Eviction

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[Justice in Aging](#) is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, housing, economic security and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ+ individuals and people with limited English proficiency.

Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems with getting on to the webinar? Send an e-mail to trainings@justiceinaging.org.
- Find materials for this training (including the slides, transcript, written materials) and past trainings by searching the [Resource Library](https://justiceinaging.org/resource-library), justiceinaging.org/resource-library.
- A recording will be posted to Justice in Aging's [Vimeo page](https://vimeo.com/justiceinaging). At the conclusion of the presentation, vimeo.com/justiceinaging.
- Enable closed captioning by selecting "CC" from the Zoom control panel.
- 1.25 hours of Continuing Legal Education (CLE) will be available

Justice in Aging's Commitment to Advancing Equity

To achieve Justice in Aging, we must:

- Advance equity for low-income older adults in economic security, health care, housing, and elder justice initiatives.
- Address the enduring harms and inequities caused by systemic racism and other forms of discrimination that uniquely impact low-income older adults in marginalized communities.
- Recruit, support, and retain a diverse staff and board, including race, ethnicity, gender, gender identity and presentation, sexual orientation, disability, age, and economic class.

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Go to justiceinaging.org and hit **“Sign up”** or send an email to info@justiceinaging.org.

Today's Webinar

1. Landscape
2. Summary of the Law
3. Special Protections for Residents whose services are funded by Medi-Cal
4. Strategies and Advocacy Tips
5. Q&A

Poll Question

How familiar are you with eviction processes in any of the licensed residential settings?

- I have never had a client
- I have advised or represented in 1-3 cases
- I have advised or represented in more than 3 cases



Overview of California's Licensed Residential Facilities

California Licensed Facilities

- Department of Health Care Services, Licensing and Certification Division
 - Nursing facilities, etc.
- Department of Social Services (DSS), Community Care Licensing Division
 - Residential Care Facilities for the Elderly, Adult Residential Facilities, etc.

DSS Licensed Residential Care

Facility Type	# of Licensed Facilities	# of Beds
Residential Care Facilities for the Elderly (RCFE)	7,474	94,131
Adult Residential Facilities (ARFs)	7,167	102,853
TOTAL RCFE/ARF	14,641	196,984

What are RCFEs?

- **Residential Care Facility for the Elderly**
- Non-medical facilities serving 60 and older
- Provide room, meals, housekeeping
- Provide personal care assistance (bathing, dressing, eating, toileting) and supervision
- Storage and distribution of medication (but not administration)
- Incidental medical provided through home health agency or other appropriately skilled professional
 - Cal. Health & Safety Code §§ 1569- 1569.889; Cal. Code Regs. Tit.22, §§ 87100- 87795

Other DSS-Licensed Residential Facilities

- Adult Residential Facilities
- Adult Foster Care Homes
- Group Homes
- Each has its own licensing regulations and similar, but not identical, eviction procedures

Why Residents Need Eviction Defense

- Isolated from community/legal assistance
- Unaware of their rights when “transfer” or “discharge” is threatened
- May not understand notice or have someone helping
- Notice and procedure often inadequate
- At risk of institutionalization or homelessness

Permitted RCFE Eviction Reasons

1. Failure to pay agreed rate for ***basic services*** w/in 10 days of due date.
2. Failure to comply with state/local law after getting written notice of violation.
3. Failure to follow facility's rules (must be written, reasonable, and agreed to).
4. After formal reappraisal, facility determines can't meet resident's changed needs.
5. Facility change of purpose.

[Cal. Code Regs. Tit. 22, § 87224\(a\)](#)

Notice Requirements

- Written notice must state:
 - Reason(s) for eviction, with specific facts underlying reason
 - Effective date of eviction
 - Resources to find alternative housing and care
 - Right to file complaint with DSS
 - Facility's obligation to file unlawful detainer action before evicting; right to court hearing to contest eviction
- Must also notify or mail notice to resident's "responsible person"

[HSC § 1569.683; CCR Tit. 22, § 87224\(d\)](#)

Potential DSS Involvement

- As mentioned, notice must inform resident of right to request state investigation of reasons for eviction.
- Also, regulations state: “A written report of any eviction shall be sent to the licensing agency within five (5) days.”
 - CCR Tit. 22, § 87224(f).

Time Requirements for Notices

- 30 days generally
 - CCR Tit. 22, § 87224(a).
- 60 days when eviction results from facility closing
- 3 days with approval from DSS, upon showing of good cause

60 Days Advance Notice When Facility Is Closing

- If eviction/transfer due to loss of license or change of use.
- In addition to regular notice contents...
 - Current resident service plan
 - Relocation evaluation and plan
 - Contact info for LTC ombudsman
 - Discussion of relocation evaluation within 30 days of eviction notice
 - Facility can't accept new residents, or sign agreements to admit
 - Health & Safety Code § 1569.682(a)(2); CCR Tit. 22, § 87224(a)(5).

3-Day Notice Requires DSS Prior Approval

- Must get DSS prior approval in writing, based on finding of “good cause.”
- Good cause = resident’s behavior threatening health/safety of self or others in facility.

[22 CCR § 87224\(b\).](#)

Notice for Long-Term Residents

- Can argue under TPA, if resident has resided \geq one year, they are entitled to 60 day notice.

Cal. Civil Code § 1946.1(b)



New Federal Eviction Protections

New HCBS Settings Rule

- Establishes minimum standards to ensure that Medicaid HCBS consumers live and receive services in settings that are truly non-institutional.
 - 42 C.F.R. § 441.301(c)(4).
- Rule initially published in 2014.
- States had to come into compliance as of March 17, 2023, unless received an extension for certain requirements.

Eviction Protection: Health Provider Owns/Controls Residence

Residents receiving Medicaid-funded services must have a legally enforceable agreement and either:

- Be protected under the state, county or city's landlord-tenant law
- or***
- Have *comparable rights* to state or local landlord-tenant eviction law, provided in their lease, residency or other written agreement.

42 CFR §441.301(c)(4)(vi)(A).

Are RCFEs Covered under the Tenant Protection Act?

- NO. RCFE's and ARF's are exempt from the just cause provisions of the TPA.
 - Cal. Civil Code § 1946.2 (e)(2)
- YES. Other TPA provisions apply to RCFE's
 - Cal. Civil Code § 1947.12(b)
 - Unless facility is exempt under specific TPA exclusion, e.g. because certified for occupancy within last 15 years, etc.
 - Must send written notice of claimed exemption at beginning of tenancy.

Comparable Eviction Processes

- 60 days notice for those whose residence is > one year
- Just cause: If breach of material term of lease alleged, specific notice & right to cure
- One month relocation benefit for non-fault evictions
- Incorporates local ordinances providing stronger protections (longer notice; right to counsel)



Advocacy Tips & Strategies

First Rule of Defending Evictions in Assisted Living

- Don't Move Out!
 - While this may seem obvious, residents often feel compelled to just leave rather than contest the eviction, even if they have nowhere to go.
 - In California, if resident doesn't leave, burden on facility licensee to file a UD action before evicting.
 - File UD Answer and Request Discovery/Trial.

Get Relevant Documents

- Admissions Agreement: Does it state state/local eviction protections?
- Notice to Quit and Proof of Service
- Witness statements, other evidence to support alleged violation
- Medical Assessments and reappraisals, if relevant

Useful Resources

- RCFE eviction notice: [CA HSC Code § 1569.683](#)
- RCFE eviction regs.: [22 CCR §§ 87224](#)
- ARF's: 22 CCR §§ 85000 -
- JIA: [Defending Evictions from Medicaid-Funded Assisted Living Facilities](#) (Nov. 2023).
- JIA: [Rights and Wrongs in Medicaid-Funded Assisted Living](#) (Dec. 2023).



Questions?

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