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## Housing Practice Tip - March 2023

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### An Updated and More Powerful Survivors' Eviction Defense

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Last year, survivors of domestic violence and victims of crime received increased and unprecedented eviction protections. SB 1017 (Eggman) (Chapter 558, Statutes of 2022) amended Civil Code Section 1946.7 and Code of Civil Procedure Section 1161.3. SB 1017 also added Section 1174.27 to the Code of Civil Procedure which allows for a partial eviction that removes the abusive person, even if the perpetrator of the abuse is a co-tenant but keeps the survivor and their family housed.

Even though California previously had some eviction protections for survivors, gaps in the law left survivors at risk of eviction because they faced barriers to utilizing the protections. The prior protections required the tenant or household member who experienced the abuse to provide specific, limited documents that demonstrated abuse to the court. With the former protections a survivor could not qualify for the protection if the abuser was a co-tenant of the same unit and a survivor would lose the protection if the survivor "allowed" the person who committed the abuse back on the property. These provisions in the law effectively allowed survivors to be evicted due to acts of violence against them.

Advocates identified these loopholes and championed changes in the laws to allow tenants who are survivors of domestic violence and other violent acts to maintain their housing and avoid eviction. In this practice tip we provide information on how to utilize these new and improved eviction defenses on behalf of survivors.

**WHAT IS THE SURVIVORS' EVICTION DEFENSE?** SB 1017 (Eggman) created an affirmative unlawful detainer defense codified in Code of Civil Procedure Sections 1161.3 and 1174.27. The survivors' eviction defense prevents tenants from being evicted because of an act of "abuse or violence" against them, someone they live with, or their immediate family member.

**WHAT ARE THE EXPANDED PROTECTIONS?** The survivors' eviction defense now protects survivors and their family members in the following situations:

- A landlord files an unlawful detainer because of one tenant's act(s) of abuse against another tenant. If a co-tenant is committing abuse, all tenants may use the survivors' eviction defense. If the court agrees that the non-abusive tenant(s) has the defense, the court should issue a partial eviction, evicting the tenant who committed the abuse but not the other tenant(s).
- A tenant receives a 3-Day Notice because of a non-tenant's abusive acts against them. If after the 3-Day Notice expires, the person who committed the abuse repeatedly comes to the property against the tenant's wishes and disturbs other tenants. The tenant may still use the survivors' eviction defense.
- A tenant receives a 3-Day Notice because of a non-tenant's abuse against them. The non-tenant never threatened the safety of anyone else on the property. After the 3-Day Notice expires, the tenant allows the non-tenant on to the property and the non-tenant does not threaten or harm anyone on the property. The tenant may still use the survivors' eviction defense.

*WHO IS PROTECTED?* A landlord is not allowed to end someone's tenancy because of abuse or violence against a tenant, someone they live with, or their immediate family members if the landlord receives documentation that shows the survivor experienced abuse or violence. The types of abuse or violent acts include:

- domestic violence;
- sexual assault;
- stalking;
- human trafficking;
- elder or dependent adult abuse;
- survivors of crimes that caused injury (new);
- survivors of crimes that involved a deadly weapon (new);
- survivors of crimes that involved force or threat of force (new).

*WHAT TYPE OF DOCUMENTS ARE NEEDED?* The tenant, not the landlord, gets to choose which type of the following documents they can use. Those include:

- Restraining order or protective order issued in the last 180 days that protects the survivor;
- Police report issued in the last 180 days and naming the survivor/victim of abuse or violence;
- Qualified third-party letter verifying that the survivor is a survivor. This includes health care professionals, domestic violence counselors, sexual assault counselors, human trafficking caseworkers, and victim of violent crime advocates; and
- (NEW) Other forms of documentation or evidence that reasonably verified that the abuse or violence occurs.

The law does not give examples of what "other documentation can reasonably verify" the crime or abuse. However, you can demonstrate abuse through emails, text messages, voicemail messages, and other types of documentation. The law is also ambiguous about *when* a survivor must provide the documentation to the landlord but [legislative intent](#) and history show that a survivor may produce evidence of abuse even after an unlawful detainer was

filed. You can use [this pocket brief](#) drafted by the Family Violence Appellate Project (FVAP) if you are representing a tenant who did not give their landlord documentation of abuse or violence before the UD was filed.

*HOW DOES A PARTIAL EVICTION WORK?* Only the court, not the landlord can issue an eviction or lockout. A judge or a sheriff may be unfamiliar with the procedure since this is a new concept for unlawful detainers. For a court to issue a partial eviction:

1. The survivor must give the landlord AND the court 1 of the 4 types of documents listed above to demonstrate that they are a survivor;
2. The survivor must tell the court they are being evicted for abuse or violence perpetrated against them as an affirmative defense;
3. The court must decide that the landlord can legally evict the person who committed the abuse or violence because of the violence; and
4. The court must decide that the landlord DOES NOT have a legally allowable reason to evict the survivor.

A tenant loses the defense if:

1. The person who causes the abuse threatens other guests' physical safety; and
2. the landlord gives the survivor tenant a three-day notice banning the person who perpetrated the abuse or violence from the property; and
3. the survivor tenant voluntarily allows the person who committed the abuse back onto the property after receiving the three-day notice.

WHEN REQUESTING A PARTIAL EVICTION, CONSIDER:

- Providing the court briefing on the legal authority for partial eviction for the court. You can find helpful SB 1017 (Eggman) legislative analysis on the partial evictions [here](#).
- Your client's safety. They may benefit from safety planning with a domestic violence advocate and a restraining order to keep them safe during a potentially dangerous transition.
- Contact your local sheriff's office to provide them with information on partial evictions because they may not yet have policies on executing partial evictions for survivors of abuse or violence.

If your client was evicted, and you think the court should have ordered a partial eviction to allow them to stay a tenant, reach out to FVAP at [info@fvaplaw.org](mailto:info@fvaplaw.org) ASAP to see if they can help in an appeal! If you have any other questions, please reach out to the WCLP housing team at [housing@wclp.org](mailto:housing@wclp.org).

Special thanks to the author Senator Susan Talamantes Eggman who championed SB 1017 to close loopholes in the law for survivors. A huge thank you to the co-sponsors of SB 1017 who worked tirelessly to get this law passed. The co-sponsors for SB 1017 are the California Partnership to End Domestic Violence (CPEDV), Communities United Against Violence (CUAV), Crime Survivors for Safety and Justice, Dr. Beatriz Maria Solis Policy Institute – Women's Foundation of California, the Family Violence Appellate Project (FVAP), and the Western Center on Law and Poverty (WCLP).



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