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The law requires apartment complexes with 16 or more units to have an on-site employee. This usually takes the form of a resident manager. Most property owners provide an apartment unit, either free or at a reduced rent, to the resident manager as part of the compensation package. A problem frequently arises when the manager is terminated and refuses to leave the unit.

The Management Agreement

The management agreement should be in writing. While oral agreements are enforceable, a written agreement is necessary in order for a resident manager to convey possession of rental units to prospective tenants. This rule is governed by the Statute of Frauds which requires that all transfers of rights to real property must be in writing. The agreement should specifically state the duties of the resident manager and should also specify that the apartment unit is part of the manager's compensation. It should clearly state that if the employment is terminated, the right to the unit is also terminated. It should also state that the termination will apply to all occupants of the unit.

Termination of Management Services

If an owner fires a resident manager, it is best to do so in writing to avoid any confusion regarding the date the employment terminated. If the apartment unit is part of the manager's compensation, once the manager is terminated, his rights to the unit are also terminated.

HIRING AND FIRING A RESIDENT MANAGER

An owner can bring an immediate action for unlawful detainer if the manager does not vacate when fired.

Separate Rental Agreement.

If, however, the owner has entered into a separate rental agreement with the resident manager, then the manager is not only an employee but also a tenant. Therefore, the manager has rights as a tenant and the general rules regarding eviction must be followed. This often occurs when an existing tenant applies for the position of resident manager. In this case, the employment agreement should state that the rental agreement is terminated, and that the only status of the manager is the one of employee, with no rights to the unit in the event of termination.

Notices

While no notice to vacate is required under the law when a resident manager is terminated, most managers may not realize that they need to vacate the unit. Therefore, it is advisable to serve a three-day notice to quit, stating that the right to occupy the unit was contingent upon continued employment and that the employment has been terminated. The owner, however, does not need to provide such a notice and may immediately file an unlawful detainer action.

If there is a separate rental agreement with the tenant, the owner must provide the appropriate notice. If it is a month-to-month agreement, then 30 days notice is required to terminate. In addition, if the rental agreement provides for low rent because of the co-existing management position, it may be necessary to serve a 30 day notice of rent increase. Whether this is necessary, however, will depend upon the wording of the rental agreement.

"Leave or Pay Rent"

Some owners are not aware that they have the right to immediately evict terminated resident managers. Instead they tell the manager to start paying rent or leave. By saying this to the terminated resident manager, the owner is giving that manager the option of becoming a tenant. If the manager pays rent, a tenancy is created, thus requiring the owner to provide notice to terminate. While notice in most jurisdictions will simply delay the ultimate eviction, if the unit is located in a rent control district, termination may only be available for cause. Therefore, never create a tenancy relationship unless you really want the manager to stay on as a tenant. ★

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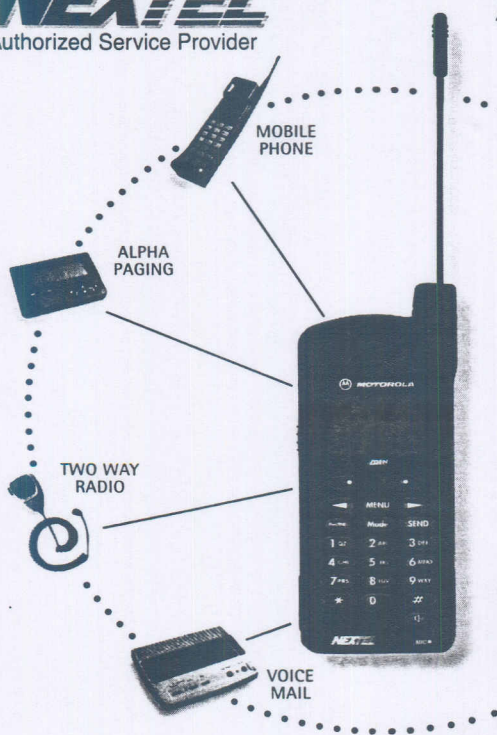


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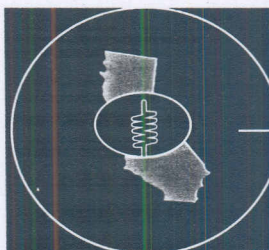
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