



KNOW YOUR RIGHTS:

MOVE-OUT ORDERS and ORDERS TO PAY RENT

What is a Move-Out Order?

A move-out order is an order a court can issue as part of a Domestic Violence Temporary Restraining Order (“temporary restraining order”) and/or Restraining Order After Hearing (“long-term restraining order”) that orders an abuser to move out of a shared residence, regardless of which person owns or rents the dwelling.ⁱ

How Can I Receive a Temporary Restraining Order with a Move-Out Order?

To request a temporary restraining order with a move-out you need to file a request for temporary restraining order that requests a move-out order (item 8 on form [DV-100](#)). To receive a move-out order you must show:

- (1) you have a right under color of the law to possession of the premises (explained below);
- (2) the abuser has assaulted or has threaten to assault you, your child, or an adult you are legally responsible for; and
- (3) physical or emotional harm would result to you, your child, or the adult you are legally responsible for if the abuser is not excluded from the home.ⁱⁱ

Can I Get a Move-Out Order if My Name is Not on the Lease or I Don’t Pay Rent?

Yes, if you have a “right under color of law” to possess the premises, you may obtain a move-out order excluding the abuser from a shared residence regardless of who is on the lease or holds title to the property.ⁱⁱⁱ Many people who are not owners or on a lease have such a right, for instance, because they live in the premises and pay part of the rent or mortgage, or contribute to the household in other ways, such as cleaning or buying food for the household. Every situation is different, so provide any proof you have of your right to live in the premises to the court, such as rent receipts, utility bills in your name or mail addressed to you, and explain your housing situation to the judge. The judge will decide if you have a right to possess the premises.

Will the Abuser Know I Am Requesting a Temporary Restraining Order with a Move-Out Order?

Not necessarily. Most temporary restraining order requests are made *ex parte*, which means without notifying the other party. The judge should grant or deny your request for a temporary restraining order and move-out order the day you file your request, unless you filed late in the day, then the court decides the next business day.^{iv} If you receive a temporary restraining order with or without a move-out order, the abuser must be given a copy of the order before the order becomes effective. You can request that the Sheriff provide this order to the abuser.^v

I Have a Temporary Restraining Order with a Move-Out Order, So How Do I Make the Abuser Move Out?

The temporary restraining order and move-out order become effective once the abuser receives a copy of the order. If the Sheriff gives the order to the abuser at home, the Sheriff should notify the abuser that they have to move out immediately. You can make your landlord change the locks by giving your landlord a written request to change the locks with a copy of the move-out order.^{vi} If your landlord does not change the locks within 24 hours of making the request and providing the landlord a copy of the move-out order, you can have the locks changed yourself. If you change the lock yourself, the locks must be changed correctly and replaced with a lock of the same quality or better than the original lock.^{vii}



How Long Will a Move-Out Order Keep the Abuser Out of the Dwelling?

A temporary restraining order lasts until a hearing for the long-term restraining order is scheduled. Generally the hearing for long-term restraining order is scheduled within 21 days of the date of the order.^{viii} An initial long-term restraining order may last up to 5 years.^{ix} The move-out order lasts as long as the temporary restraining order or long-term restraining order, unless the order says otherwise.^x

Can I Get a Move-Out Order if the Court Denies My Temporary Restraining Order and/or Move-Out Order?

Yes, if the court denies your temporary restraining order request, the court must schedule a court hearing, generally within 21 days, to determine whether to grant your request for a restraining order, including the requested move-out order. The abuser must be given notice of the hearing.^{xi} At the court hearing you will have the opportunity to obtain a long-term restraining order with or without a move-out order.

What Happens at a Court Hearing for a Long-term Restraining Order?

At the court hearing a judge will either grant or deny your request for a restraining order and move-out order.^{xii} The abuser must be given notice of the court hearing, because the abuser has a right to file a written response to the request for a restraining order, and come to court to present their evidence and request the restraining order not be granted.^{xiii} At the court hearing, **you only need to show that physical or emotional harm would otherwise result to you or your children if the abuser is not excluded from the residence.** Similar to a temporary restraining order move-out order, you do not need to be on the lease or title of the residence to obtain a move-out order in a long-term restraining order.^{xiv}

Can I Make the Abuser Pay the Rent or Mortgage After I Obtain a Move-Out Order?

Yes. At the same time you request the temporary restraining order or long-term restraining order with a move-out order you may request that the court order the abuser to pay all or a portion of the rent or mortgage.^{xv} In the temporary restraining order application, Question 15 asks the applicant about “Payment of Debt,” which can include rent and mortgage payments.

This tip sheet is not providing legal advice and should not replace the advice of an attorney. This resource uses California law only. Last updated on 11/1/18
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How do I get more assistance? Contact FVAP at info@fvaplaw.org or (510) 858-7358 for questions.

ⁱ Cal. Fam. Code. §§ 6321 and 6340(c).

ⁱⁱ *Id.* at § 6321.

ⁱⁱⁱ *Id.* at § 6321.

^{iv} *Id.* at § 6326.

^v *Id.* at § 6383; <http://www.courts.ca.gov/selfhelp-domesticviolence.htm>.

^{vi} Cal. Civ. Code § 1941.6(b).

^{vii} *Id.* at (c).

^{viii} Cal. Fam. Code § 242(a).

^{ix} *Id.* at §6345.

^x *Id.* at §§ 6321 and 6345.

^{xi} *Id.*

^{xii} *Id.* at § 6340.

^{xiii} *Id.* at § 243.

^{xiv} *Id.* at § 6340.

^{xv} *Id.* at § 6324; 6340(a) &(c).