COVID-19 and Terminating a Lease Off-Campus Housing/Non-University

For any questions regarding you on-campus housing, please contact the Housing Department of UC Irvine or ACC if you are in an ACC-affiliated complex.

Can I terminate my lease due to COVID-19?

• Although legal grounds to terminate a lease in CA must be analyzed on a case by case basis, in general the COVID-19 outbreak is NOT a ground to terminate a lease. Similarly, UCI’s decision to offer only online instruction for spring quarter 2020, financial hardship, and mental distress generally are NOT grounds to terminate a lease.

• There may be an exception to this general rule. There may be a legal argument favoring termination if the tenant is immunocompromised and there is a greater risk of infection in the rental property than another abode where the tenant could reside (e.g., family residence). You will need to consult with an attorney to make this legal argument.

• There may be other legal grounds to support the tenant’s ability to terminate a lease.
  o There currently is a condition in the apartment that renders it uninhabitable, and the landlord is notified of the condition and fails to repair it. CA Civil Code section 1942. You should consult an attorney before attempting to terminate your lease using this statute, as this legal ground is not available for most repair issues.
  o Some leases, although not most, have a provision that allows termination if the tenant agrees to pay a fee. Landlords are required to provide a copy of the lease to tenants pursuant to CA Civil Code section 1962.
  o “Force majeure” clauses are extremely rare in residential leases. They are more commonly found in commercial leases. If your lease has a force majeure clause, it would need to specifically list pandemic as one of the reasons to trigger the clause. You should consult an attorney before attempting to terminate your lease on force majeure grounds.

• Tenants who have rental insurance should review their policy to see if it offers any relief in circumstances like a pandemic or where a national emergency has been declared.

What are my options if I do not have legal grounds to terminate my lease?

• With few exceptions, CA law requires a tenant to pay rent through the end of the term of the lease. You can try to negotiate with your landlord to relieve you of the burden of
paying rent, but most landlords are not going to be open to an early termination as they count on rent to pay the mortgage, insurance, and property taxes on the property.

- When you negotiate with your landlord, be respectful and reasonable. Being angry, rude, or belligerent are not winning techniques. Explain your situation calmly and thoroughly and explore any options that the landlord is willing to consider. You can ask if the landlord would be willing to reduce the amount of rent even if they will not agree to terminate the lease.

- **If the landlord agrees to any changes in the lease terms, you MUST get them in writing.** Technically, they are not enforceable unless they are in a writing signed by all parties to the Page 2 agreement. An agreement reached via email, text, or social media is a workable alternative if the signed writing is not possible but be sure to save it in a way that you can access easily if the landlord later backs out of the agreement.

- One option is to ask the landlord if you can sublease your apartment. Most leases require tenants to get the landlord’s written consent to sublease. Under CA law, landlords should act in good faith when determining whether to consent to the sublease. Some landlords require prospective sublessees to go through the application process and have a credit check.

**What are the pros and cons of subleasing?**

- It is very important that you have a written sublease to set forth all of the terms of the agreement.

- The biggest advantage of subleasing is that someone else is paying all or part of your rent. But given the large number of students who want to terminate their leases and find sublessees, you likely will need to greatly reduce the amount of rent you will ask your sublessee to pay. You need to consider whether it is better to get some money to defray the cost of your rent or pay it all yourself. But there are risks:

  - If you sublease either all or part of your apartment, you still remain liable under the terms of your lease with the landlord. So if your sublessee fails to pay rent or damages the apartment, the landlord will expect you to pay the rent or the cost of repairing the damage. This is why it is a good idea to ask for a deposit from the sublessee. Given the number of people looking for sublessees, however, you may have a hard time finding one who is willing to pay a deposit.

  - Because the landlord has no contractual relationship with the sublessee, only you (as a master tenant) have the standing to evict a sublessee. Therefore, if the landlord wishes to evict the sublessee, they will have to evict you (even if you are not at fault).
Another possible risk is that the sublessee may not leave the apartment when the lease ends. This is particularly problematic if the sublessee has stopped paying rent. If the sublessee continues to live in the apartment after the lease terminates, the landlord may decide to file an eviction action. See the section below for the consequences of an eviction action.

If some of your roommates are staying in the apartment, there may be an issue if your roommates do not approve of your sublessee. If you have a roommate agreement, either written or oral, then the terms of the agreement would govern what type of permission may be necessary.

**What are the consequences of not paying my rent?**

- If you fail to pay your rent in full, your landlord could decide to file an eviction action called an unlawful detainer (UD). The landlord can file a UD even if most of the rent has been paid. There are several negative consequences of having a UD filed against you. Just the filing of the UD can cause your name to be listed on the Unlawful Detainer Registry, which is like a credit reporting agency. Many CA landlords subscribe to the UD registry and will not rent to people who are listed in the registry. In addition, the UD will appear in your credit report if the landlord gets a judgment against you.

- An eviction does not relieve you of your obligations under the lease. In addition to a court order giving the landlord the right to regain possession of your apartment, the judge will order that you pay rent through the end of the lease or until the landlord finds a replacement tenant. The court also will order you to pay any costs the landlord incurs in trying to find a replacement tenant. If your lease has an “attorney’s fees” provision (and most do), then the court will order you to pay the attorney’s fees, up to any limit noted in the lease, and court costs.

- You and all of your roommates who are on the lease and signed it are jointly and severally liable. Joint and several liability is a legal term that means that each of you is liable for the full amount of the rent and the full amount of any damage to the apartment. It also would include any guarantors. So if one of your roommates fails to pay rent, the landlord can look to any or all of the other tenants or guarantors to pay that person’s share of the rent.

- Joint and several liability also means that the landlord would name all of the tenants and their guarantors in any lawsuit for nonpayment of rent or damage to the apartment or for eviction.

- Another consequence of joint and several liability is that one tenant cannot terminate the lease if other tenants are staying in the apartment. All tenants who signed the lease are considered to be one unit.
• Some landlords send accounts where the rent has not been paid in full to collection agencies. The collection agencies can report you to the credit reporting agencies and even sue you.

Am I protected by an eviction moratorium?

• On March 27, 2020, Governor Newsom announced a state-wide moratorium on eviction orders and their enforcement until May 31, 2020 for tenants who are unable to pay rent due to COVID-19:
  o If they have lost income due to COVID-19, the state of emergency, or related government response.
  o If they are unable to work because they have COVID-19 or if they are caring for someone with the virus.
  o If they are caring for children, whose schools are closed.

• Under the Governor’s order, all tenants must notify the landlord in writing before the rent is due or no later than 7 days after it is due that they are unable to pay and maintain documentation supporting the reason they are unable to pay. It only applies to tenants who are not in arrears in rent. Tenants remain liable to pay the rent due, and evictions may resume after the moratorium ends.

• The City Council of Irvine adopted the following “To strongly encourage, and expect, all residential and commercial landlords, and all utility providers, in the City of Irvine to abide by the provisions of the Governor’s Executive Order, and to specifically refrain from evictions, foreclosures, rent increases, or service and utility disconnections during the period of the COVID-19 emergency.”

Where can I get help?

• You may utilize ASUCI’s Legal Education Clinic resource page and contact any of the Community Legal Resources.

**Content reflecting information from other University of California’s Students Legal Services-UCB, UCSD, and UCLA. Thank you.