



KNOW YOUR RIGHTS: **MOVE-OUT ORDERS and ORDERS TO PAY RENT**

What is a move-out order?

- A move-out order requires the person who is being abusive to move out of a shared home.¹ In domestic violence restraining orders a court can grant a move-out order as part of a temporary restraining order (“TRO”) and as part of a long-term order, known as a Restraining Order After Hearing.

How do I ask for a move-out order as part of my temporary restraining order?

- To ask the court for a move-out order with your temporary restraining order, you need to fill out Item 13 “Order to Move Out” on a form called “DV-100” (see image below). Click [here](#) for a fillable DV-100 form or use the URL located in the footnote.² To request a move-out order, you must provide your address and check the box or boxes that describe your housing situation. If none of the boxes describe your housing situation, you can check the box for “Other” and then write in what your housing situation is.

13 **Order to Move Out**

a. I ask the judge to order the person in **2** to move out of the home, located at:

(Give address): _____

b. I have a right to live at this address because:

Check all that apply

I own the home.

I have lived at this address for _____ years, _____ months.

My name is on the lease.

I pay for some or all the rent or mortgage.

I live at this address with my child(ren).

Other (please explain): _____

¹ California Family Code §§ 6321(a), 6340(c).

² <https://www.courts.ca.gov/documents/dv100.pdf>



What do I have to show to get a move-out order as part of my temporary restraining order?

- To get a move-out order you must show the court:
 - (1) you have a “right under color of the law” to live in the home (explained below),
 - (2) the abuser has assaulted or threatened to assault you, your child, or dependent adult; and
 - (3) you, your child, or a dependent adult will be physically or emotionally harmed if the abuser continues to live in the home.³

Can I get a move-out order if my name is not on the lease or deed, or if I don’t pay rent?

- Yes. If you have a “right under color of the law” to live in the home, the court may grant a move-out order even if your name is not on the lease or property title.⁴
- “Right under color of the law” to use the home can mean different things. Here are some examples:
 - Someone who is not on the lease may have a “right under the color of the law” because they live on the property and pay part of the rent.
 - Someone who is not listed on the property deed may have a “right under the color of the law” because they pay a portion of the mortgage or property taxes.
 - Someone may have a “right under the color of the law” if they give to the household in ways other than paying the rent or mortgage, like cleaning or buying food for the household.

How can I show that I have a “right under color of law” to live in the home?

- Give the court any proof of your right to live in the home. Attach this proof to your TRO request and explain your housing situation to the judge in court.
 - Proof of your right to live on the property may include rent receipts, screenshots of online rent money transfers, utility bills in your name, or mail addressed to you.
- Only the judge can decide if you have a right to use the home.

³ California Family Code § 6321(b).

⁴ California Family Code § 6321(a).



How do I show that I or my children will be physically or emotionally harmed without a move-out order?

- It depends on the details of your case. Generally, you show that the abuser has committed acts of domestic violence in the past and explain the risks if you and your children have to remain in the home with the abuser. Abuse can include physical violence, sexual assault, emotional abuse, financial control, or stalking.⁵
- If there was abuse that happened in front of your children, or abuse that they could hear from another room, mention that to the judge and in your court papers.

Can I make a move-out request if I already moved out?

- Yes. If you moved out of the shared home to escape the abuse before seeking a TRO, you can still ask for a move-out order in order to move back in safely.⁶

Will my abuser know that I am requesting a temporary restraining order?

- Not necessarily. Most TRO requests can be made without telling the abuser.
- But, once your TRO is granted, the abuser must be “served,” which means they must be given a copy of your request for the restraining order and the court order. The abuser must be served before your hearing for a long-term restraining order. You cannot personally serve the abuser with a copy of the order, but you can ask the sheriff or another adult to serve them.⁷ The person who serves the abuser with the court documents must also fill out form DV-200. Click [here](#) to access form DV-200 or use the URL in the footnote.⁸

I have a move-out order, so how do I make the abuser move out?

- The police and sheriff can enforce an order once the abuser receives a copy of the restraining order.
- If the sheriff serves the order to the abuser at the shared home, the sheriff should tell 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 restraining order with a move-out order.⁹ If your landlord does not change the locks within 24 hours of receiving your request and the copy of the restraining order

⁵ *Nicole G. v. Braithwaite* (2020) 49 Cal.App.5th 990.

⁶ *Nicole G. v. Braithwaite* (2020) 49 Cal.App.5th 990.

⁷ California Family Code § 6383(a).

⁸ <https://www.courts.ca.gov/documents/dv200.pdf>

⁹ California Civil Code § 1941.6(b).



with a move-out order, you can change the locks yourself. If you change the locks yourself, you or a professional must install a lock of the same or better quality and give the landlord a copy of the key.¹⁰

Can I get a move-out order if the court denies my TRO request, or denies the part of it asking for a move-out order?

- Yes. If the court denies the TRO or any of the requests in the TRO, the court must still schedule a hearing to grant or deny a long-term restraining order, including the requested move-out order.

What happens at the court hearing for a long-term restraining order?

- The abuser has a right to respond to the request for a restraining order, present evidence, and ask the court to deny the restraining order.¹¹
- At the court hearing, in order to be granted a move-out order, you need to prove three things to the judge:
 - (1) you have a “right under color of the law” to use the home (explained above);
 - (2) the abuser has assaulted or threatened to assault you, your child, or dependent adult; and
 - (3) you, your child, or a dependent adult will be physically or emotionally harmed if the abuser continues to live in the home (explained above).¹²

How long will a move-out order keep the abuser out of the residence?

- The move-out order lasts as long as the TRO or long-term restraining order unless the order says differently.¹³
- A TRO lasts until the hearing for the long-term restraining order takes place. Generally, the court will schedule the hearing for the long-term restraining order within 21 days of the date of the temporary restraining order.¹⁴
- An initial long-term restraining order may last up to 5 years.¹⁵

¹⁰ California Civil Code § 1941.6(c).

¹¹ California Family Code § 243(a), (c).

¹² California Family Code § 6321(b).

¹³ California Family Code § 6321(a), 6345(a).

¹⁴ California Family Code § 242(a).

¹⁵ California Family Code § 6345(a).



Can the court make the abuser pay the rent or mortgage?

- Yes, you can ask the court to order the abuser to pay the rent or mortgage, even if the abuser is also ordered to move out of the shared home.¹⁶
- To ask the court to order the abuser pay the rent or mortgage make sure you complete Item 22 “Pay Debts (Bills) Owed for Property” on the DV-100 form (see image below). You can access a fillable form DV-100 [here](#) or by using the URL in the footnotes.¹⁷

22 Pay Debts (Bills) Owed for Property

(If you want the person in 2 to pay any debts owed for property, list them and explain why. The amount can be for the entire bill or only a portion. Some examples include rent, mortgage, car payment, etc.)

a. I ask the judge to order the person in 2 to make these payments while the restraining order is in effect:

(1) Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

(2) Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

(3) Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

Explain why you want the person in 2 to pay the debts listed above:

When completing Item 22, make sure to include:

- (1) who the debt is owed to,
- (2) what the debt is for (such as for the rent or mortgage),
- (3) the amount and the due date of each payment, and
- (4) why it is urgent that the abuser pays this debt.

For example, if the abuser is the only source of income in the household, explain that you will be evicted if the rent is not paid.

- At the hearing for the long-term restraining order, explain to the court why the abuser should pay the rent or mortgage.

How do I get more help? Contact FVAP at info@fvaplaw.org or call our helpline, (510) 380-6243.

¹⁶ California Family Code §§ 6324, 6340(a).

¹⁷ <https://www.courts.ca.gov/documents/dv100.pdf>