

RENT

How to Evict a Family Member Who Has Worn Out His Welcome

By Lisa Gordon | Dec 28, 2017



If you're wondering how to evict a family member—and maybe feeling more than a bit guilty over the prospect—well, don't be so hard on yourself: You have plenty of company on this one. Lots of homeowners eventually wind up with a guest or two who have worn out their welcome and refuse to move out, and sometimes they happen to be relatives. They promised they wouldn't be a burden (and most guests aren't), but if you've asked them to leave and they won't budge, an [eviction](#)—taking legal action to remove a tenant—is your final option.

But does the process get more complicated if you're trying to evict someone you're actually related to?

Is relative a tenant, licensee, or neither?

States have different laws on exactly how to classify someone who stays in your home. In the eyes of the law they can be classified as a tenant or licensee. In some areas, they are considered a tenant when they pay rent, but in other areas a tenant is simply someone who occupies your space (with no exchange of money). A person who stays in your home for an extended period of time can also be classified as

a *licensee*, depending on state law. Some states even say it's acceptable to ask the person to leave and remove his belongings, no legal action necessary, as long as rent wasn't exchanged.

If you're trying to kick a guest out of your house, the first thing you need to do is establish how your state classifies these (now) unwelcome visitors. If they're considered a tenant or licensee, you will need to go through the process of eviction.

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No one eviction fits all; different cities and states have different procedures and timelines. But other than the potential emotional burden, the process of evicting a relative is no different from [evicting any other tenant](#).

The truth is, most places don't allow homeowners to instantly evict a boarder, regardless of who they are or what they've done to deserve the boot, says **Zachary D. Schorr**, a Los Angeles real estate attorney.

If they are considered a tenant or licensee, **Schorr** says, you can't just throw them out and you can't just change the locks. "That's universal. You have to go through the court system."

Generally, this is what you'll need to do to evict someone:

1. Serve your tenant with a notice to vacate that states when and why he must vacate; most places require three to 30 days. Be specific, and state what he must do to stay, and by what deadline. The notice must be written carefully, and the help of an attorney could make the process go more smoothly.
2. If your tenant doesn't leave by the deadline, you must file an eviction petition with the courts—some places have housing courts, some hear eviction cases in county courts— and ask for an unlawful detainer hearing, where a judge listens to your reasons for eviction and checks your notice to vacate. If the judge rules for you, he will issue an order of eviction and a writ of possession, which gives your property back to you.
3. If your tenant still refuses to leave, now in violation of a court order, you can call law enforcement to remove him. (Note: This will make future family get-togethers rather awkward.)

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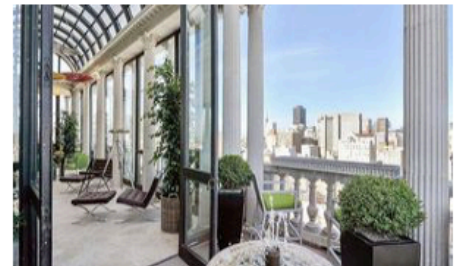
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Since personal feelings are involved, the ordeal can be messy. Here's how to facilitate eviction and make it less excruciating.

Consult a lawyer: The first thing you should do is consult a local attorney specializing in landlord or tenant law. Evictions are heavily regulated by state and local law, and an attorney in your area will know what type of notification you must give, documents you must file, checks you shouldn't cash.

Don't take rent: If you're trying to evict someone, don't accept rent because it will give your unwanted tenant more rights, says **Schorr**.

"In California, for example, if they're paying rent and you want them out, they may be entitled to 30 days' notice. If they're there for more than one year it's 60 days' notice. And every time you accept rent, the clock starts again," he says.

Write it down: When you let anyone live in your house longer than a Christmas vacation, it's a good idea to send them an e-mail outlining your expectations. If you expect your recent college grad who's crashing with you to look for work and take out the trash, write it down. If you have rules about your guest using recreational substances, spell them out. And if your tenant breaks those rules, give him reasonable time to find a new place. Most jurisdictions don't like to make people homeless "at the snap of a finger," **Schorr** says.

Try to work it out: In the end, even paying someone to go away might be faster and cheaper than trying to evict him. Eviction can cost \$1,000 to \$10,000 in legal fees, and sometimes more if the case goes before a jury.

"I've had one eviction going on for a year and a half. We've been fighting like crazy," **Schorr** says. Paying for a session or 10 of family counseling will likely cost less money than an eviction. Plus, it may foster a closer relationship between you and your relative once he's living happily somewhere else.

Lisa Kaplan Gordon is an award-winning writer who's covered real estate and home improvement for realtor.com, Yahoo, AOL, and many others. [Follow @kaplan_lisa](#)
