



THE REGIONAL STEERING COMMITTEE ON HOMELESSNESS AND HOUSING

Together we: Identify common problems, search for useful solutions

Collectively we participate in: Policy development
Training Information sharing Action strategies
Program design

WELCOME

JULY 30, 2004

10:00 AM – 3:00 PM

1. **Federal/State Update and Recent Convenings:**
 - *Budgets, VA/HUD Appropriations Bill, and ELHSI*
 - *The most recent NOFA application process*
 - *HUD's proposed new regulations for the Supportive Housing Program*
 - *The Northern/Central Valley Homeless Roundtable and National Alliance on Ending Homelessness Conference*

2. **Employing homeless or formerly homeless people in nonprofits, with a focus on homeless servicing agencies.**
Hear the pros and cons from panelists currently employing homeless people.

3. **Medi-Cal Peer Counseling Reimbursement:** *Two new models of reimbursement systems working in other communities.*

4. **Meeting Mental Health Needs:** *Bay Area local efforts regarding the Mental Health Initiative, what its passage may mean, and an update on mental health outreach work. Help schedule a planning meeting to go to the State.*

5. **Comparing Land Lord Tenant Law to the Transitional Housing Misconduct Act:** *Which is the most appropriate for your program?*

6. **Homeless Families:** *A list serv of family service providers, a survey regarding topics and issues relevant to this sector, and possible workshops*

Please see reverse side for upcoming meeting dates and topics.

Upcoming RSC Meetings -- Mark Your Calendars!

September 17

November 19

January 28

Upcoming RSC Meeting Topics for the month of September and beyond:

- Accessing Medicaid: Best Practices
- Taking a global look at homelessness: what are other countries doing to end homelessness?
- A convening of the local Department of Veterans Affairs homeless coordinators
- Emerging state homeless strategies in the era of the Governor; discharge planning, supportive housing and a ten-year plan?
- Sorros Foundation After Prison Initiative
- Ten-Year Plan to End Homelessness Update
- Trends in Affordable Housing
 - Millennial Housing Commission Report
 - National Housing Trust Fund
 - Region-wide Trust Fund conversations

We are so pleased to see all of you at these meetings; your presence and input are what make the RSC meaningful and successful. Thanks for keeping us in your busy schedules!

Let's get HUD fully funded!
What can YOU do about the federal budget?
Call, write, or email your Representatives and Senators!

Here's a sample text of what you can say:

“On July 22, the House Appropriations Committee approved the VA/HUD appropriations bill, which cut HUD funding by \$108 million. While the bill that was passed reinstated much of the funding for Section 8 housing vouchers that the Bush Administration’s proposed budget would have cut, it does so at the cost of other, vitally important housing programs. Homeless shelters, public housing, senior and disabled housing, among many other programs are all slated to be cut by at least 4%.

Please don’t rob Peter to pay Paul! All of these programs meet critical needs in our community, especially those programs aimed at helping house the homeless. [*Describe your own efforts regarding homelessness and the needs for housing in your community.*] These cuts are especially troublesome given the enormous tax breaks this Administration has provided to the wealthiest Americans. The unmet need in our country is great and we must make it a national priority to fund housing programs at levels that meet this urgent need.”

Here's who to say it to:

To find your Representative, go to: <http://www.house.gov>, type in your zip code and the website will automatically direct you to your Representative’s home page. From there, you will find out how you can contact your Representative via telephone or email.

Or contact California’s Senators:

Senator Dianne Feinstein

United States Senate
331 Hart Senate Office Building
Washington, DC 20510
202-224-3841 (tel)
202-228-3954 (fax)

-- or --

One Post Street, Suite 2450
San Francisco, CA 94104
(415) 393-0707 (tel)
(415) 393-0710 (fax)

PLEASE NOTE:

Email is only available through the Senator’s website:

<http://feinstein.senate.gov/contact.html#phonefax> and click on the “email me” link.

Senator Barbara Boxer

United States Senate
112 Hart Senate Office Building
Washington, D.C. 20510
(202) 224-3553 (tel)

-- or --

1700 Montgomery Street, Suite 240
San Francisco, CA 94111
(415) 403-0100 (tel)
(415) 956-6701 fax

PLEASE NOTE:

Email is only available through the Senator's website:

<http://boxer.senate.gov/contact/webform.cfm> and click on the "email me" link.

Congress is in session September 7-30, 2004, with a tentative adjournment date scheduled for October 1, 2004.

For further information or to find out how you , please contact Lise K. Ström, Staff Attorney, via email at lise@homebaseccc.org or by phone at 415-788-7961, ext. 306.

MEMORANDUM

TO: Regional Steering Committee on Homelessness and Housing

FROM: HomeBase

RE: Proposed Rule to Amend HUD's Supportive Housing Program Regulations

DATE: July 30, 2004

Background

“Regulations” are meant to implement “statutes,” and HUD has regulations which implement the federal statutes concerning homeless assistance, called the McKinney-Vento Homeless Assistance Act.

HUD is proposing to amend some of those regulations pertaining to the Supportive Housing Program. The Supportive Housing Program provides assistance to local governments or nonprofit agencies for 1) acquisition, rehabilitation, new construction and leasing of supportive housing, 2) operating costs in connection with supportive housing, and 3) supportive services provided to homeless persons such as child care, employment assistance, outpatient health services, assistance in finding permanent housing, etc. Supportive housing includes transitional housing, permanent housing and safe havens.

Public comment on the proposed changes can be made through September 20, 2004.

HomeBase will submit comments on behalf of the Regional Steering Committee based upon today's conversation. Interested persons are also invited to submit comments electronically through, or the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban development, 451 Seventh Street, SW, Washington, D.C. 20410-0500. Comments should refer to: “Docket No. FR-4616-P-01; HUD-2004-0001, Supportive Housing Program.”

A full copy of the Proposed Rule can be found in the Federal Register, July 20, 2004, <http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/pdf/04-16390.pdf>.

Introduction to Proposed Changes

HUD states that the current regulations require revision to bring them up-to-date with statutory changes, requirements included in HUD appropriations acts and HUD practices (e.g. while HUD regulations allow grantees to use SHP grant funds to purchase HUD-held, single family properties leased by the grantee, HUD suspended leasing under this component of the SHP and has no plan to reinstate this aspect of the program).¹

¹ For those of you who actually read the regulations, you will be happy to know that HUD's proposed amendments delete most of the references to other laws found in the regulations, and instead inserted the pertinent section of the other law.

The proposed rule also makes other changes which HUD sees as improving the program. It is those changes which this memorandum highlights, and on which your feedback is requested.

Substantive Changes Which HUD Believes “Improves the Program”

Grant Terms: Eliminates the maximum grant term of 5-years for Leasing, Supportive services and operating costs.

Previously regulations stated, “Upon execution of a grant agreement covering assistance for leasing, supportive services, or operating costs, HUD will obligate amounts for a period not to exceed five operating years. The total amount obligated will be equal to an amount necessary for the specified years of operation, less the recipient's share of operating costs.”

By eliminating this section, the HUD grant agreement “will be flexible as to operating term for leasing, supportive services and operating costs as long as the purposes are in compliance with the SHP regulations.”

Grant Terms: Retains and strengthens term for construction, rehabilitation and acquisition grants.

Regarding funding to construct, rehabilitate or acquire structures, the regulations retain the requirements that grantees agree to continue to operate the supportive housing or services for 20 years (this period could be shortened by a determination by HUD that the structure was no longer needed and HUD’s approval of its conversion for another use for the direct benefit of low-income persons).

The regulations strengthen the 20-year commitment by requiring the grantee to record a deed restriction or covenant running with the land embodying this restriction, as well as a lien against the property in favor of HUD to secure HUD’s interest in the repayment of the grant if the facility is not used for its intended purpose for the prescribed time.

Definition of “Operating costs”

The definition of operating costs was clarified (the current regulations include differing definitions). The proposed new definition specifically includes “insurance” as an operating cost, and includes the other costs identified in the current regulations except for “expenses incurred for conducting on-going assessments of the supportive services needed by residents and the availability of such services.”

The proposed definition is:

Operating costs means expenses incurred by a grantee operating supportive housing with respect to:

1. Day-to-day management (including staff salaries), maintenance, repair, and security for the supportive housing;

2. Utilities, insurance, fuel, furnishing and equipment for the supportive housing;
2. Relocation assistance under section 583.500 (displacement, relocation and acquisition), including payments and services; and
4. Other costs associated with operating the supportive housing.

By a new separate regulation, grantees still have an obligation to conduct an ongoing assessment of the supportive services required by program participants and the availability of the services and to make adjustments as appropriate.

Relationship between grantee and supportive housing residents – no landlord tenant relationship required.

Under the new regulation, it is specified that “grantees/project sponsors using grant funds to provide supportive housing are not required to create a landlord-tenant relationship with residents of that supportive housing.”

Grantees/sponsors may require residents to sign an “occupancy agreement” establishing conditions for residency.

Occupancy agreement must include a procedure for termination of participation including: written notice containing a clear statement of reasons for the termination, an opportunity for review of the termination decision before a person other than the person or persons who made the original decision, and prompt written notice to the resident of the final decision to terminate the occupancy agreement.

Agreement between grantee and project sponsor.

Under the new regulation, there needs to be a written agreement between grantees and project sponsors. “Before disbursing any SHP funds to a project sponsor, the grantee shall sign a written agreement with the sponsor. At a minimum, the written agreement shall include the following:

1. a statement of work (a description of the project’s activities, time schedule, performance measures, program income and budget and state the overall goals of the programs – to help homeless person achieve residential stability, increase their skill levels or incomes and obtain greater self-determination);
2. an agreement that the project sponsor follow the regulations;
3. an agreement as to records and reports that the project sponsor must maintain and prepare;
4. the procedures and any other information pertinent to the grantee’s release of grant funds to the project sponsor;
5. a requirement that the grantee monitor the goals and performance of the project sponsor; and a provision for suspension or termination of the project sponsor if the sponsor materially fails to comply with any term of the grant
6. a statement that suspension or termination may occur if the sponsor materially fails to comply with any term of the award and that the award may be terminated for

convenience;

7. the terms of commitment, repayment of grants and the prevention of undue benefit to the grantee if a project is sold and was funded by a grant for acquisition, new construction or rehabilitation with a 20-year grant commitment;
8. an agreement that the sponsor will comply with the requirement and standards of OMB Circular A-122; and
9. if applicable, the conditions for use of SHP funds by religious organizations shall be included (as per current regulation).

Safe Havens

The changes to regulations concerning Safe Havens are for the most part “housekeeping.” The new regulations include safe havens as one of the components funded by SHP funds, and defines safe haven:

Safe haven means supportive housing in a structure, or clearly identifiable portion of a structure, that meet the following criteria. It –

1. serves hard-to-reach homeless persons who have a severe mental illness, are on the streets and have been unable or unwilling to receive supportive services;
2. provides 24-hour residence for an unspecified duration;
3. provides private or semi-private accommodations; and
4. have overnight occupancy limited to 25 persons. A safe have may also provide supportive services on a drop-in basis to eligible person who are not residents.

Grant close-out procedures

The new regulations include procedures to be used at grant close-out.

Grants are closed-out based on usage of the grant funds as well as on completion of the activities for which the grant was provided.

Closeout activities:

- ② Grantee submission of all financial, final performance and other reports within 90 days
- ② De-obligation of any unused grant amounts, which are returned to HUD
- ② Repayment to HUD of disallowed costs, if any
- ② HUD’s preparation of a closeout agreement regarding any final obligations remaining after the grant closeout (e.g. identification of closeout costs eligible to be paid with supportive housing funds,

What happens to program income at grant closeout.

The receipt and expenditure of program income shall be recorded as part of the financial transactions of the project. (Program income means gross income received by the grantee or project sponsor directly generated from the use of SHP funds.)

Disposition of program income.

Program income received before grant closeout:

- ② must be treated as additional SHP funds (except for occupancy charges) subject to requirements governing the use of SHP funds and used for previously approved eligible activities in the project;
- ② occupancy charges (resident rent) may be used in the operation of the project or may be reserved, in whole or in part, to assist residents of transitional housing in moving to permanent housing.
- ② must be used before additional cash withdrawals are made from the SHP account.

Program income received after closeout shall not be governed by this regulation, except that if the grant from which the program income was generated is renewed under SHP, funds received after closeout of the grant being renewed shall be treated as program income of the renewal project.

Targeting people with certain disabilities

According to HUD, “currently the regulations recite that projects may serve designated populations of disabled persons without further explanation.” A new regulation clarifies the rights of persons with disabilities to be assisted in a particular project.

“Generally, all projects must be available to all eligible persons without regard to their type of disability.”

In very limited circumstances a project may lawfully establish a preference for serving a specified type of disability. This may be done only if:

- ② the preference was proposed in the initial application to HUD,
- ② the project will provide services appropriate for the intended population and
- ② if excluding other persons is necessary to serve the intended population as effectively as others are served elsewhere.

HUD will determine the necessity on a case-by-case basis from information provided in the application. HUD anticipates that in many cases *addiction treatment projects* will be able to meet the necessity test. In projects with an established preference, the provider will be able to hold space open in the project for persons meeting the established preference.

Those who do not seek or do not receive approval to establish a preference for a type of disability may still advertise themselves as offering services for a particular type of disability, which the rule calls “targeted projects.” If there is space available in a target project, it may not be held open for someone with the targeted disability. HUD expects that a person with a different type of disability who wishes to participate in the services will be offered the available space.

Environmental review

For FY2001 and later grants, environmental review responsibilities are assumed by a

state or unit of local government (even if it is not the recipient of the grant).

Site control

The current law requires that the grantee or project sponsor must demonstrate site control before HUD will execute a grant agreement where grant funds will be used for acquisition, rehabilitation or new construction, or for operating costs of supportive housing, or to provide supportive services (except where the grantee/project sponsor will provide services at sites not operated by them).

The amended regulation gives some additional examples of how site control might be demonstrated (this list includes the old and new examples): a deed or other proof of ownership, executed lease agreement, executed contract of sale, executed option to purchase or lease.

The new regulation also now references projects financed by use of Low Income Housing Tax Credits, and says that site control may be demonstrated by a limited partnership wherein the grantee or project sponsor is the general partner or owns a controlling interest in the general partner.

The new regulation also now states that the site control requirements do not apply where a project assists homeless families or individuals in obtaining a lease (which may include assistance with rent payments and receiving supportive services), after which time the family or individual remains in the same housing without further assistance.

Do you have any questions or concerns about the changes to these regulations or other comment you wish us to present to HUD on behalf of the RSC?

Please direct any questions or comments about this memorandum to HomeBase Managing Attorney, Karen Gruneisen, at 415-788-7961, ext. 311.

MEMORANDUM

TO: Bay Area Regional Steering Committee on Homelessness and Housing

FROM: HomeBase

RE: Discharging a Resident from a Transitional Housing Program

DATE: July 30, 2004

RSC Background

In July of 1992, California passed the Transitional Housing Misconduct Act, or THMA. This Act was created as an alternative means to discharge residents of transitional housing programs (THP's). The THMA allows the THP to take out a temporary restraining order against the resident if the resident's behavior constitutes either abuse or program misconduct. This Act provided an alternative to the only other clear legal method of evicting a tenant – the unlawful detainer process. The unlawful detainer process is used to evict any tenant where a landlord-tenant relationship exists. However, it is unclear whether the unlawful detainer process applies to THP's.

These issues were taken up in a 1992 manual created by HomeBase and presented at an RSC meeting. The manual described the newly enacted Transitional Housing Misconduct Act, as well as the questions raised about the applicability of the unlawful detainer procedure to THP's. Since then, HomeBase has provided regular updates in the progress and use of these two processes.

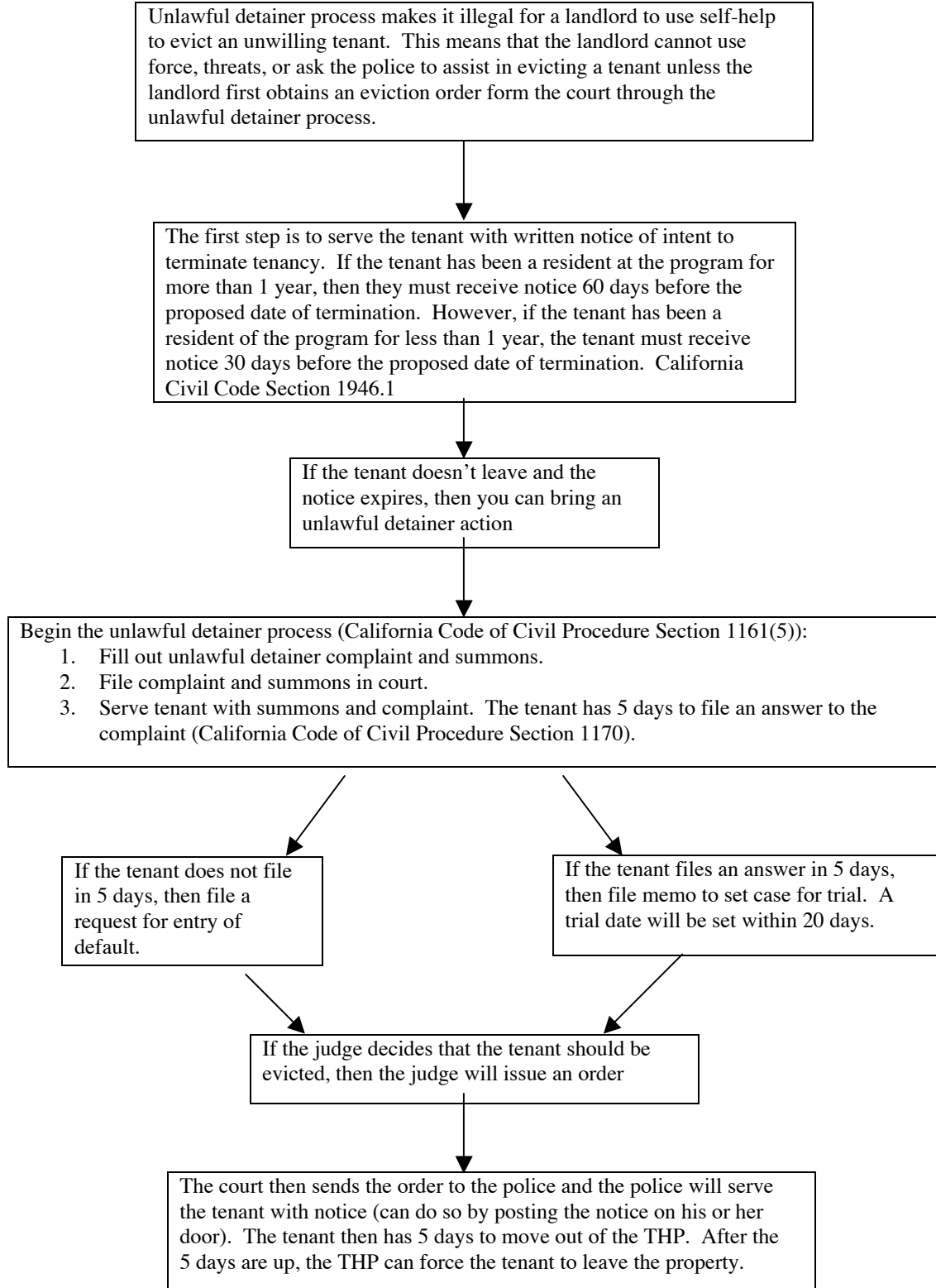
Context

Currently, these two processes remain the only clear legal ways to discharge a resident of a transitional housing program (THP). However, the debate continues as to whether the unlawful detainer process even applies to THP's and if there are other means by which residents can be discharged. This packet contains updated information on both the THMA and the unlawful detainer process. It includes explanations of both processes as well as diagrams to help you properly follow the requirements of each. In addition, this packet sets forth the common problems that THP's have with these procedures as well as possible solutions.

Follow-up

- What are the THP's doing in your community with regards to discharging residents?
- What are your problems or concerns with the unlawful detainer process and/or the THMA?
- What would an ideal discharge procedure for your community look like?
- Do you have suggestions or other solutions?
- Would you want to get together to craft a new solution that both complies with the law and satisfies your needs?

UNLAWFUL DETAINER PROCESS



UNLAWFUL DETAINER PROCESS

What is the Unlawful Detainer Process?

California law requires that the strict protocol of the unlawful detainer process be followed in order to legally evict a tenant. A landlord cannot evict a tenant through the use of force, threats, or by police assistance, unless the landlord has first obtained an eviction order from the court through the unlawful detainer process.

Who does it apply to?

The California Code of Civil Procedure Section 1161 states that the unlawful detainer process applies to “tenants of real property.” In order to be a tenant of real property, a landlord-tenant relationship must exist – a relationship that is formed when two factors are satisfied. First, the tenant must “hire” the property. A tenant has hired the property if there exists a contract between the two parties and there is some form of compensation for the room. Second, the tenant must not fall within any exemption set forth by the California Civil Code Section 1940(b). The issue then becomes whether residents of a THP are considered tenants so that the THP must comply with the rules and restrictions of the unlawful detainer process.

Are residents of THP’s considered tenants?

1. The primary argument that a resident of a THP is not a tenant is that housing is just one component of the THP, which is really built around providing other services, whereas housing is the only component in a traditional landlord-tenant relationship. Therefore, the relationship of the THP with the resident is entirely different than the relationship between a conventional landlord with his or her tenant. On the other hand, proponents argue that under the law, a resident is a tenant as long as the landlord-tenant relationship is established and no exemption applies. As long as these factors are satisfied, it does not matter whether the THP is a program that offers housing or is a traditional landlord-tenant situation – either way, the resident is considered a tenant.
2. Has the resident “hired” the property?
 - a. The main argument that residents have not hired the property is that no formal lease exists. Critics argue that the resident has not hired the property since no landlord-tenant relationship exists without a lease. On the other hand, proponents argue that a formal lease is not necessary for the landlord-tenant relationship because a person can become a tenant as long as there is an express or implied contract between the two parties. Most THP’s have a contract with the residents explaining the rules and regulations of the program.
 - b. Some argue that the resident has not hired the property if the THP allows compensation for the room in the form of services instead of money. However, proponents argue that services are an acceptable form of compensation, and therefore, the residents have hired the property.

- c. Also, characterizing programs as providing services rather than lodging, and having residents sign “fee for service” contracts as opposed to leases probably would not avoid the provisions of the unlawful detainer process. Even if a contract calls itself a fee for service agreement, if money is exchanged for the right to occupy part of the building, the courts may decide that the agreement is a lease.
 - d. Finally, some argue that residents have not hired the property if their rent is subsidized by either the program or by government grants. On the other hand, proponents argue that tenants who live in government owned housing or government subsidized privately owned rental housing generally have greater pre-eviction rights than tenants in privately owned housing.
3. Does the resident fall within any exemption?
- a. According to the California Civil Code Section 1940 (b), the unlawful detainer process does not apply to
 - i. Someone who maintains transient occupancy in a hotel, motel, residence club, or other facility when the transient occupancy is or would be subject to tax under Section 7280 of the Revenue and Tax Code. Section 7280 states that rooms in a hotel, inn, tourist home or house, motel or other lodging are subject to taxation only for occupants who stay more than 30 days.
 - 1. Therefore, if the resident remained at the THP for 30 days or more, the THP would not fall within the exemption. However, if the resident was there for 30 days or less, it is unclear whether the THP would be covered by this exemption. This is because many THP’s are non-profit organizations and are not subject to taxation under section 7280, so they are arguably not exempted from the unlawful detainer process.
 - 2. It should be noted that there is a statute in place to protect residents from attempts by a THP to evict them prior to the 30 day benchmark in order to avoid the unlawful detainer process. Violation of that statute results in a fine.
 - ii. Someone who maintains occupancy at a hotel or motel where the innkeeper retains a right of access to and control of the dwelling unit and the hotel or motel provides or offers all of the following services to all of the residents: (1) facilities to safeguard personal property, (2) central phone service, (3) maid, mail and room service, (4) occupancy for periods of less than 7 days, and (5) food service.
 - 1. Therefore, if the resident is there for less than 7 days then the THP may be exempted under this section (they must also satisfy the other requirements).

How long does it take to discharge a resident?

The process can take, at a minimum, 9 weeks until the resident is actually evicted from the property.

Conclusion

Depending on who you talk to, the residents of THP's may be considered tenants. No case has been decided to clarify the issue, so it is left to the individual THP to decide for themselves. However, if the THP chooses not to implement the unlawful detainer process and a savvy resident challenges his or her discharge, the THP could be sued for forcible entry.

TRANSITIONAL HOUSING MISCONDUCT ACT

Generally

The Transitional Housing Misconduct Act, or THMA, was created in order to provide transitional housing programs with a faster alternative to discharge residents than the unlawful detainer process.

Qualifying for THMA

In order to use the THMA, there are several things that must be in place (Health and Safety Code Section 50580)

1. The program must be a transitional housing program under the Act.
2. The program must have entered into a contract with the residents
3. The problematic behavior of the participant must be considered either abuse or program misconduct
4. The program
 - a. Must be run by a governmental agency, or private nonprofit corporation which receives any portion of its funds from a governmental agency
 - b. Or the program must be hired by a governmental agency or nonprofit corporation to operate its transitional housing program
5. The THP must be used by homeless individuals
6. Only the THP can file for a TRO or injunction against the resident

If all the requirements are met then the program operator of the transitional housing program can discharge the participant of the transitional housing program by using the THMA (see step by step process in diagram on following page).

It should also be noted that the THMA can be used to discharge a resident even if s/he has not stayed in the THP for 30 days. This is because the contract between the resident and the program states that the period of occupancy will be at least 30 days.

What qualifies as a transitional housing program under the Act?

A transitional housing program under the Act is any program that is designed to assist homeless persons in obtaining skills necessary for independent living in permanent housing. In addition, the program must contain ALL of the following (Health and Safety Code Section 50582(g)):

1. The program must have comprehensive social service programs which include regular individualized case management services and may include other services (such as alcohol and drug abuse counseling improvement education, employment and training assistance services, and independent living skills development), AND
2. The program provides temporary housing units in a structured living environment and rules which residents must comply with to remain in the program, AND
3. There must be a rule or regulation that specifies an occupancy period of not less than 30 days, but not more than 24 months.

What are the requirements for the contract?

In order to qualify for THMA, the transitional housing program must have entered into a contract with the resident that contains ALL of the following (Health and Safety Code Section 50582(c))

1. The transitional housing program's rules and regulations
2. A statement of the program operator's right of control over and access to the program unit occupied by the participant
3. A restatement of the requirements and procedures of created by the Act (the restatement is included in the court forms)

The problematic behavior must constitute either abuse (violent behavior) or misconduct (non-violent behavior) under the Act...

Abuse: What constitutes abuse? Health and Safety Code Section 50582(a)

- Must have one of the following three situations:
 - i. Intentionally or recklessly causing or attempting to cause bodily injury, or
 - ii. Sexual assault, or
 - iii. Placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself or another
- AND the injured person must be:
 - i. Another participant, or
 - ii. The transitional housing project's employees, or
 - iii. The project operator, or
 - iv. A person residing within 100 feet of the program site

Misconduct: what constitutes program misconduct? Health and Safety Code Section 50582(d)

- Program misconduct is:
 - i. When the resident intentionally violates any of the transitional housing program rules and regulations that substantially interfere with the orderly operation of the transitional housing program,
 - ii. AND the violation relates to
 1. drunkenness on the program site, or
 2. unlawful use or sale of controlled substances, or
 3. theft, or
 4. arson, or
 5. destruction of the property of the program operator, persons living within 100 feet of the program site, program employees, or other participants
 6. violence or threats of violence and harassment of the program operator, persons living within 100 feet of the program site, program employees or other program participants

How long does it take to discharge a resident?

In situations where there is abuse, you may be able to get a temporary exclusion or stay-away order against the resident that same day. However, it would take at least 1 1/2 weeks to get a permanent exclusion order against the resident and could take as long as 3 1/2 weeks to do so.

In situations of program misconduct, you will not be able to get a temporary exclusion or stay-away order against the resident, so they will not be immediately discharged. Instead, it would take at least 1 1/2 weeks and as long as 3 1/2 weeks to get a permanent injunction against the resident. In addition, if the resident cannot be evicted from the THP based on the permanent injunction, so the THP must wait until the resident violates the injunction before the court can change the permanent injunction to a permanent exclusion or stay-away order.

Definitions

Participant: A program participant is a homeless person under contract with a program operator to participate in a transitional housing program and to use a dwelling unit in the program site. A program participant also includes a person living with a participant at the program site.

Homeless Person: A homeless person is an individual or family who, prior to participation in a THP, either lacked a fixed, regular, and adequate nighttime residence or had a primary nighttime residence, that was one of the following:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including, but not limited to, welfare hotels, congregate shelters and transitional housing for the mentally ill
2. An institution that provides a temporary residence for individuals intended to be institutionalized
3. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Temporary Restraining Order (TRO): This is a court order which requires the resident to stop his or her problematic behavior. A TRO is not an exclusion order and therefore the resident cannot be forced to leave based on a TRO. TRO's generally last up to 5 days.

Temporary Exclusion Order: This is a court order that excludes the resident from the THP for up to 5 days.

Temporary Stay-Away Order: This is a court order that requires the resident to stay at least 200 feet away from the program site for up to 5 days. This is similar to an exclusion order in that the resident is not allowed on the site for the duration of this order.

Permanent Injunction: This is a court order lasting up to one year that requires the resident to stop his or her problematic behavior. Again, this is not an exclusion order so the resident can remain at the THP provided that s/he does not engage in the prohibited behavior.

Permanent Exclusion Order: This is a court order that lasts up to one year and excludes the resident from the THP.

Permanent Stay-Away Order: This is a court order that lasts up to one year and requires that the resident stay at least 200 feet away from the program site.

ABUSE

The participant has engaged in abuse...See Health and Safety Code Section 50585

Note: What constitutes abuse?

- Must have one of the following three situations:
 - o Intentionally or recklessly causing or attempting to cause bodily injury, or
 - o Sexual assault, or
 - o Placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself or another
- AND the injured person must be:
 - o Another participant, or
 - o The transitional housing program's employees, or
 - o The program operator, or
 - o A person residing within 100 feet of the program site

Under the THMA, you will first need to file a Petition for Order Prohibiting Abuse or Program Misconduct. Within this petition, you should request a temporary restraining order, or TRO, for abuse. You should also try to get a temporary exclusion order or a temporary stay-away order against the resident included in the TRO.

Has the participant been under contract with the program operator for 6 months or longer?

If yes, then is an action pending against the participant? Or is a TRO already in effect and subject to further orders?

If no, then can seek a TRO

If no to either of the questions, then the program operator cannot seek a TRO. However, the program operator can still seek a permanent injunction.

If yes to either of those questions, then can seek TRO, temporary exclusion order or temporary stay-away order

ABUSE

How to apply for a TRO...

1. Make good faith effort to give notice to the resident of the date, time and place that the petition will be filed
 - a. Good faith means that you do not have to actually give notice to the person, as long as you made a good faith effort to notify them.
2. Complete form for Petition for Order Prohibiting Abuse or Program Misconduct
 - a. Request restraining order for abuse
 1. The restraining order for abuse will prohibit the resident from engaging in the abusive behavior, but this alone will not serve to evict the resident.
 - b. Request temporary exclusion order and temporary stay-away order (should try to get exclusion order or stay-away order included in TRO)
 1. Temporary exclusion orders will exclude the resident from the transitional housing program and so they will be evicted for the period of the TRO (5 days). Similarly, temporary stay away orders that require the resident stay at least 200 feet away from the program site also act like evictions for the period of the TRO.
 2. However, exclusion and stay-away orders are rarely granted in TRO's. They are only granted in an emergency where exclusion from the program is necessary to protect another participant, project employee, or individual living within 100 feet of the project site from imminent serious bodily injury.
3. Complete top portion of Order to Show Cause
4. Call local court to find out when and where to appear to file petition
5. Go to court to file Petition for Order Prohibiting Abuse and to request TRO.

If the judge grants the TRO without an exclusion/stay-away order, then a hearing will be scheduled for a permanent injunction within 5 days

- The TRO itself only lasts for 5 days
- This plain TRO serves like a warning and cannot exclude the resident from the program based on the TRO

If the judge grants a TRO with an exclusion/stay-away order, then a hearing will be scheduled for a permanent injunction within 5 days

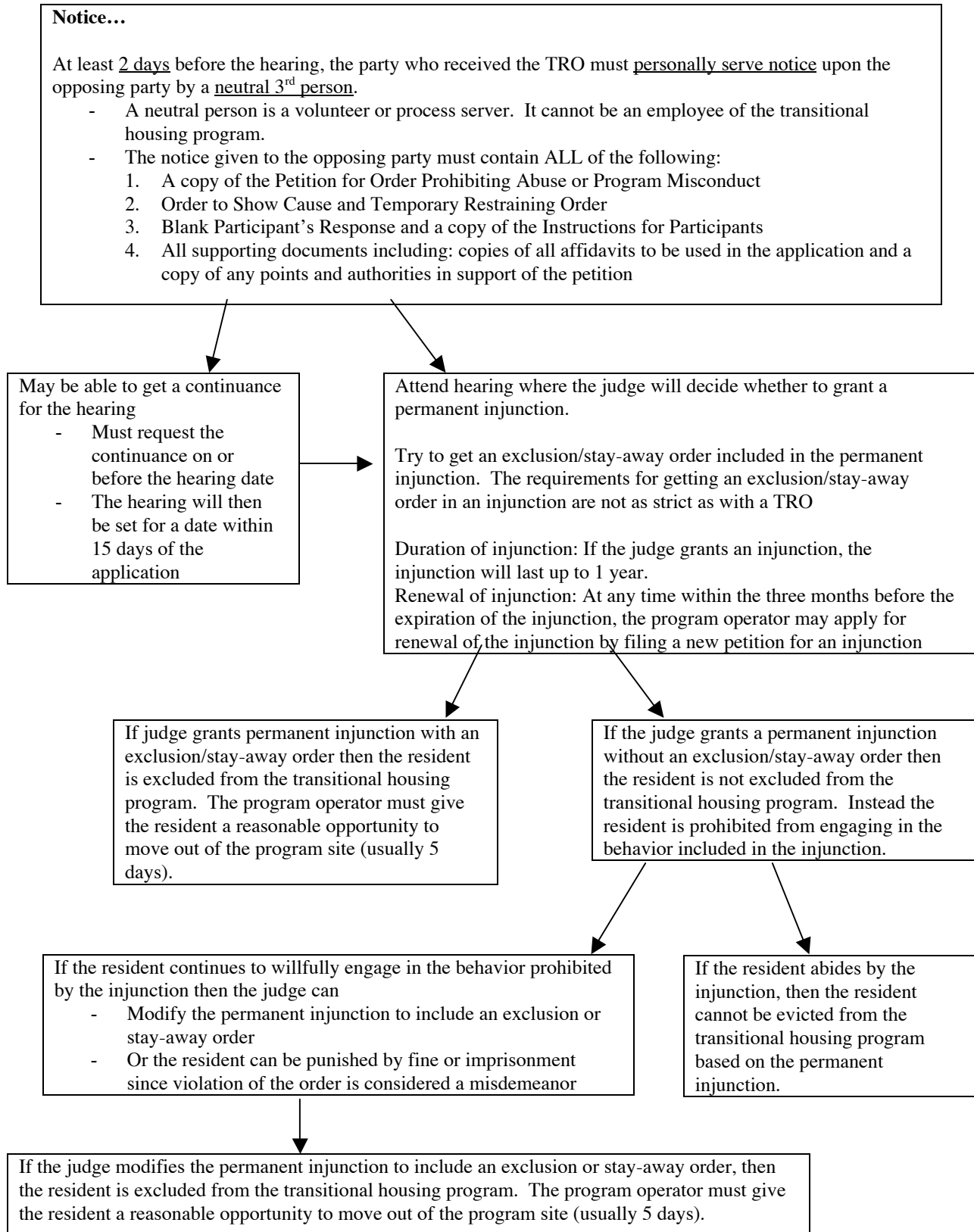
- Again the TRO, including exclusion/stay-away order, lasts only for 5 days
- Can exclude the resident from the program on the basis of the exclusion order

If the judge grants a TRO without the exclusion/stay-away order, and the resident violates the TRO, then the resident can be punished by fine or imprisonment since violation of an order is considered a misdemeanor.

If the judge grants a TRO with or without an exclusion/stay-away order and the resident abides by the order(s), then continue with the process for the permanent injunction as normal

If the judge grants a TRO with the temporary exclusion/stay-away order, and the resident violates the TRO, then the resident can be punished by fine or imprisonment since the violation of an order is considered a misdemeanor.

ABUSE



PROGRAM MISCONDUCT

The participant has engaged in program misconduct...See Health and Safety Code Section 50585

Note: What constitutes program misconduct?

- Program misconduct is:
 - o When the resident intentionally violates any of the transitional housing program rules and regulations that substantially interfere with the orderly operation of the transitional housing program,
 - o AND the violation relates to
 - drunkenness on the program site, or
 - unlawful use or sale of controlled substances, or
 - theft, or
 - arson, or
 - destruction of the property of the program operator, persons living within 100 feet of the program site, program employees, or other participants
 - violence or threats of violence and harassment of the program operator, persons living within 100 feet of the program site, program employees or other program participants

Under the THMA, you will first need to file a Petition for Order Prohibiting Abuse or Program Misconduct. Within this petition, you should request a temporary restraining order, or TRO, for program misconduct. You will not be able to seek a temporary exclusion or stay-away order because those are only granted in an emergency where exclusion from the program is necessary to protect another participant, project employee, or individual living within 100 feet of the project site from imminent serious bodily injury. That is not the case in situations of program misconduct.

Has the participant been under contract with the program operator for 6 months or longer?

If yes, then is an action pending against the participant? Or is a TRO already in effect and subject to further orders?

If no, then can seek a TRO

If no to either of the questions, then the program operator cannot seek a TRO. However, the program operator can still seek a permanent injunction.

If yes to either of those questions, then can seek TRO.

PROGRAM MISCONDUCT

How to apply for a TRO...

1. Make good faith effort to give notice to the resident of the date, time and place that the petition will be filed
 - a. Good faith means that you do not have to actually give notice to the person, as long as you made a good faith effort to notify them
2. Complete form for Petition for Order Prohibiting Abuse or Program Misconduct
 - a. Request restraining order for program misconduct
 1. The restraining order for abuse will prohibit the resident from engaging in the misconduct, but this alone will not serve to evict the resident.
3. Complete top portion of Order to Show Cause
4. Call local court to find out when and where to appear to file petition
5. Go to court to file Petition for Order Prohibiting Program Misconduct and to request TRO.

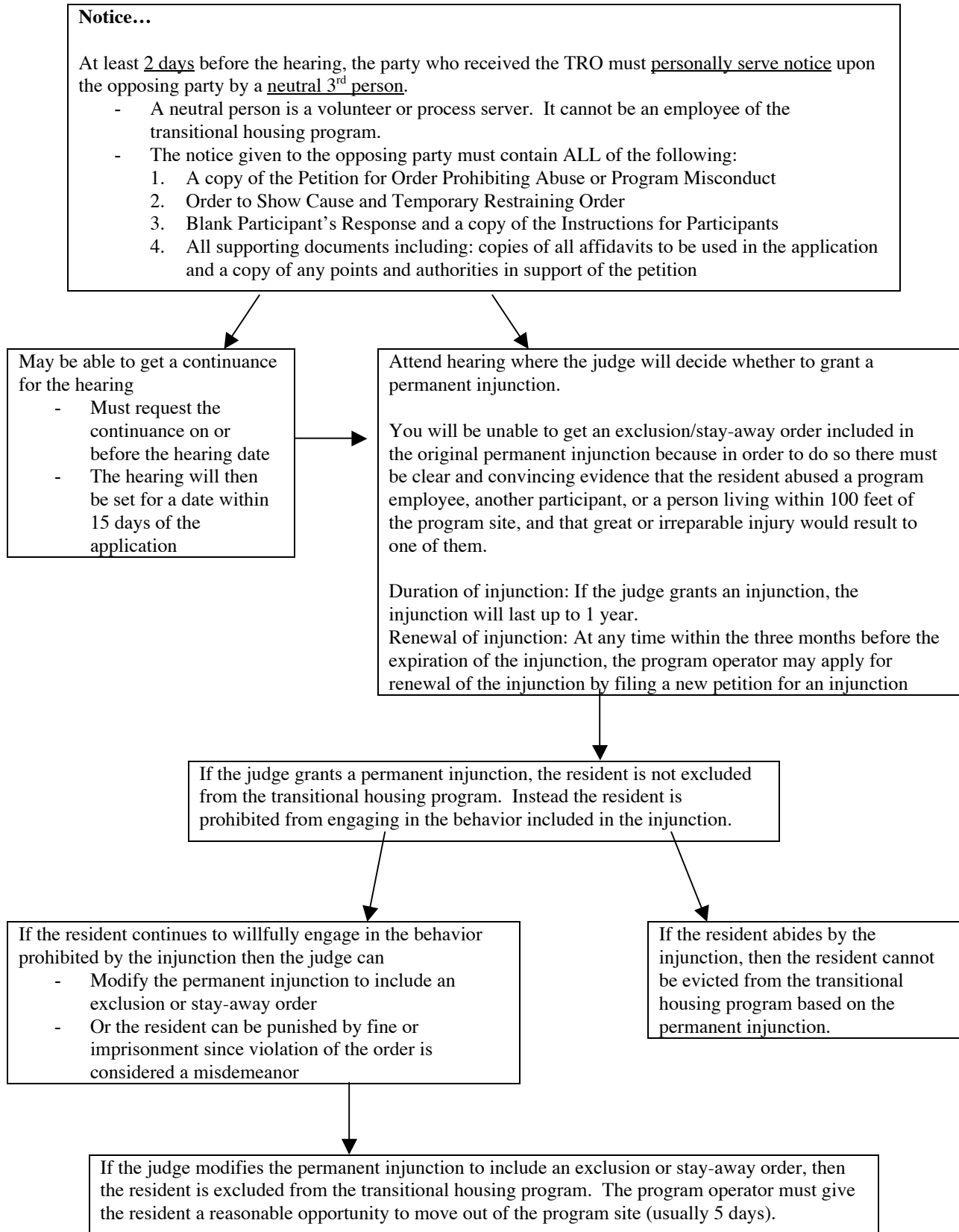
If the judge grants the TRO, then a hearing will be scheduled for a permanent injunction within 5 days

- The TRO itself only lasts for 5 days
- The TRO serves like a warning and the THP cannot exclude the resident from the program based on the TRO

If the judge grants a TRO and the resident violates the TRO, then the judge can punish the resident by fine or imprisonment since violation of an order is considered a misdemeanor.

If the judge grants a TRO and the resident abides by the TRO, then continue with the process for the permanent injunction as normal

PROGRAM MISCONDUCT



PROBLEMS AND SOLUTIONS

What are the THP's options?

Since the law in this area is so unclear, the program operator can decide whether or not they believe the residents are tenants. As a result, the program operator can choose which method to use in discharging the residents from the THP. However, the program operator must be aware of the potential consequences of his or her decision.

If the residents of THP's are not considered tenants, then in order to discharge a resident, the THP can:

1. Follow the unlawful detainer process if they so choose
2. Use the THMA if they so choose and if they qualify
3. Discharge the resident with the minimum due process requirements. This is necessary because shelter is an essential benefit, and under the California and U.S. Constitutions as well as under common law, people cannot have essential benefits removed without minimum due process. In addition, HUD requires that denial of services be accompanied by minimum due process. The requirements for minimum due process are as follows:
 - a. Written notice clearly stating the reasons for discharge
 - b. A hearing or review of the decision to discharge by a person or persons other than the person who made the original decision.
 - c. Prompt written notice of final decision.

If the residents of the THP are considered tenants, then in order to discharge the resident, the THP must either:

1. Follow the unlawful detainer process
2. Follow the THMA if they qualify

Problems

There are a number of problems with these laws

1. Again, since it is up to the individual THP to choose their discharge procedure, if they do not follow either the unlawful detainer process or the THMA, the THP could wind up being sued for forcible entry. In addition, if the THP does not follow the unlawful detainer process or the THMA and the resident refuses to leave the program, then the THP would be forced to begin the unlawful detainer process in order to have the weight of the law behind the discharge.
2. Legal representation is needed for the THP in the unlawful detainer process.
3. If the THP follows through with the unlawful detainer process then an eviction is left on the resident's record. This may cause problems for the resident when looking for housing in the future. A similar complaint exists for the THMA where the TRO remains on the resident's record as well as the final injunction.
4. The length of time that it takes for the unlawful detainer process is a common complaint. Some THP's argue that it makes their rules practically ineffective if the resident can

violate the rule but remain in the program for another 9 weeks. As a result, the THP loses much of its leverage and its ability to help others. In addition, some THP's complain that judges are not aware of the THMA and therefore the THMA process takes almost as long as the unlawful detainer process.

5. There are a number of problems that arise in THP's that are not covered by the THMA so that the THP's only recourse is to proceed with an unlawful detainer.
6. The THP cannot get a TRO against a resident if they have contracted at the program for more than 6 months. This creates a problem because often the program initiates the THMA process because the behavior is so bad that a TRO is necessary.

Solutions

One city created their own grievance procedure which both the THP and the resident agree to participating in. This grievance procedure consists of an internal hearing, and then, if the resident wants to, s/he can appeal to the external panel for an external hearing. This process does not preclude any additional legal measures, so the resident or THP could pursue alternative measures through THMA or the unlawful detainer process. However, if the external panel opted to evict the resident and the resident failed to leave, the THP would have to initiate the unlawful detainer process in order to force the resident to leave. Also, it is unclear what would happen if a savvy resident came along and sued the THP for forcible entry.

Maybe another solution would be to make a policy like the one mentioned above a legally recognized option, so that if the THP pursued that option then the decision of the external panel could be legally enforced. Also, this would allow the THP to choose between the new policy, the THMA (when a TRO would be needed), and the unlawful detainer process.

Another possible solution would be to try to change the definition of tenancy. If there were to be a different legal definition for a tenant than for a resident in a THP, the THP's would not have the problems of dealing with the unlawful detainer process.

Questions to Consider:

- What are the THP's doing in your community with regards to discharging residents?
- What are your problems or concerns with the unlawful detainer process and/or the THMA?
- What would an ideal discharge procedure for your community look like?
- Do you have suggestions or other solutions?
- Would you want to get together to craft a new solution that both complies with the law and satisfies your needs?

Discharging a Resident

- There are two clear ways to evict a resident in California:
 - The Unlawful Detainer Process
 - The Transitional Housing Misconduct Act

The Unlawful Detainer Process

- The unlawful detainer process provides one way to evict a resident from a THP
- However, it is unclear whether this process must be followed when a THP discharges a resident

Transitional Housing Misconduct Act

- The Transitional Housing Misconduct Act, or THMA, provides the program operator with an alternative to the unlawful detainer process
- In order to use the THMA, many requirements must be met
- The most significant requirement is that the behavior must constitute either abuse or program misconduct

THP's Options

- The law in this area is unclear, so the THP is left with several options of how to discharge the resident

Problems with the unlawful detainer and THMA processes

- Lawsuit or refusal to leave
- THP needs legal representation
- Eviction, TRO or injunction left on the resident's record
- 9 weeks to get an eviction in the unlawful detainer process; takes almost as long for the THMA process because the judges are unaware
- Behavioral problems not covered by the THMA
- The 6 month contract barrier against getting a TRO in the THMA

Solutions

- Create your own grievance procedure
- Create other legally recognized options for THP's to discharge residents
- Change the definition of tenancy