



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

What is a move-out order?

- A move-out order requires an abuser to move out of a shared home.¹ A court can grant a move-out order as part of a both forms of Domestic Violence Restraining Orders: a temporary restraining order (“TRO”) and a long-term order, known as a Restraining Order After Hearing.

How can I receive a temporary restraining order with a move-out order?

- To ask the court for a move-out order with your temporary restraining order, you need to fill out Item 8 “Move-Out Order” on the request form [DV-100](#) (see image below).

Check the orders you want.

6 **Personal Conduct Orders**
 I ask the court to order the person in (2) not to do the following things to me or anyone listed in (3):

a. Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, impersonate (on the Internet, electronically or otherwise), or block movements

b. Contact, either directly or indirectly, in any way, including but not limited to, by telephone, mail or e-mail or other electronic means

The person in (2) will be ordered not to take any action to get the addresses or locations of any protected person unless the court finds good cause not to make the order.

7 **Stay-Away Order**

a. I ask the court to order the person in (2) to stay at least _____ yards away from (check all that apply):

<input type="checkbox"/> Me	<input type="checkbox"/> My school
<input type="checkbox"/> My home	<input type="checkbox"/> Each person listed in (3)
<input type="checkbox"/> My job or workplace	<input type="checkbox"/> The child(ren)'s school or child care
<input type="checkbox"/> My vehicle	<input type="checkbox"/> Other (specify): _____

b. If the person listed in (2) is ordered to stay away from all the places listed above, will he or she still be able to get to his or her home, school, job, workplace, or vehicle? Yes No (If no, explain): _____

8 **Move-Out Order**
(If the person in (2) lives with you and you want that person to stay away from your home, you must ask for this move-out order.)

I ask the court to order the person in (2) to move out from and not return to (address): _____

I have the right to live at the above address because (explain): _____

This is not a Court Order.

Revised July 1, 2016

Request for Domestic Violence Restraining Order
(Domestic Violence Prevention)

DV-100, Page 2 of 6
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¹ California Family Code §§ 6321(a), 6340(c).



- To receive a move-out order you must show the court:
 - (1) you have a “right under color of the law” to use 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.²

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 use the home, the court may grant a move-out order no matter who is on the lease or holds title to the property.³
- “Right under color of the law” to use the home can mean different things. For instance, 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 can also have a right under the color of the law if they contribute to the household in other ways, such as by cleaning or buying food for the household.
- Give the court any proof of your right to live on the property. 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 can 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.

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, emotional abuse, financial control, or stalking.⁴
- 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.⁵

² California Family Code § 6321(b).

³ California Family Code § 6321(a).

⁴ *Nicole G. v. Braithwaite* (2020) 49 Cal.App.5th 990.

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



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

- Not necessarily. Most TRO requests can be made without telling the abuser.
- However, once your TRO is granted, the abuser must be “[served](#),” which means they must be given a copy of the 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.⁶ The person who serves the abuser must also fill out a certain form ([DV-200](#)).

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.⁷ If your landlord does not change the locks within 24 hours of receiving your request and the copy of the restraining order 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 same or better quality, and give the landlord a copy.⁸

Can I get a move-out order after 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.⁹
- 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

⁶ California Family Code § 6383(a).

⁷ California Civil Code § 1941.6(b).

⁸ California Civil Code § 1941.6(c).

⁹ California Family Code § 243(a), (c).



(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).¹⁰

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 otherwise.¹¹
- 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.¹²
- An initial long-term restraining order may last up to 5 years.¹³

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.¹⁴
- Add rent and/or mortgage payments to Item 15 “Debt Payment” in your request for a temporary restraining order (form [DV-100](#)). Attach an explanation of why it is urgent that the abuser pays the rent or mortgage, for example, that the abuser is the only source of income in the household and 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.

¹⁰ California Family Code § 6321(b).

¹¹ California Family Code § 6321(a), 6345(a).

¹² California Family Code § 242(a).

¹³ California Family Code § 6345(a).

¹⁴ California Family Code §§ 6324, 6340(a).

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