

# LANDLORD/TENANT BASICS

YOUR NEXT STEP – LANDLORD/PLAINTIFF’S CHECKLIST  
(in English and Spanish)

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YOUR DAY IN COURT

WHAT TO DO WITH PROPERTY LEFT BEHIND BY YOUR TENANT

INFORMATION FOR TENANTS IN FORECLOSED PROPERTY



# YOUR NEXT STEP

## LANDLORD/PLAINTIFF'S CHECKLIST

- STEP 1**      **Serve the 3/30/60/90 Day Notice**  
(You must wait until the time stated on the notice expires before you can file a Complaint for Unlawful Detainer with the Court.)
- STEP 2**      **File the Complaint at the Clerk's Office**  
(If the tenant does not respond to the 3/30/60/90 day notice, you may proceed with a Complaint for Unlawful Detainer.)
- STEP 3**      **Serve the Complaint on the tenant(s)/defendants(s)**  
(You filed your Complaint for Unlawful Detainer. Now, have someone over the age of 18 years hand-deliver (serve) a copy of the Complaint to the tenant/defendant.)
- STEP 4**      **File the Proof of Service for the Complaint with the Clerk's Office**  
(After the Complaint is served on the tenant/defendant, have the person who helped you with the service fill-out the Proof of Service and file it at the Clerk's Office.)
- STEP 5**      **File Request for Entry of Default/Default Judgment OR File Request to Set Case for Trial**  
(1. If the tenant/defendant did not file an Answer, you can file a request for default/default judgment. (GO TO STEP 7)  
2. If the tenant/defendant filed an Answer, you can file a request to set case for trial. This will cause a hearing to be set 20 days from the date of the request.)
- STEP 6**      **Hearing**  
(Prior to the hearing, you should prepare your evidence. Also, prepare the Landlord Trial Sheet (available at our Centers) and Judgment.
- STEP 7**      **Obtaining a Writ of Possession**  
(If you were granted possession of the property by either a default judgment or court judgment, you can now request that a Writ of Possession be issued by the Clerk.)
- STEP 8**      **Sheriff's Posting of the Notice to Vacate**  
Once the Clerk issues the Writ, you will have to take it to the Sheriff's Court Services for processing. The Sheriff will post what is called a "Notice to Vacate." The tenant has five days from the date the Sheriff posts the Notice to Vacate to move-out.



# YOUR NEXT STEP

## TENANT/DEFENDANT'S CHECKLIST

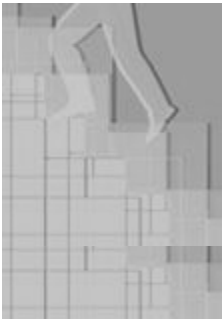
- STEP 1**      **Serve the Answer**  
Have someone over the age of 18 years send (serve) by regular mail a copy of the Answer to the landlord/plaintiff. After the Answer is mailed to the landlord/plaintiff, have the person who helped you with the mailing fill-out the Proof of Service.)
- STEP 2**      **File the Answer with the Proof of Service at the Clerk's Office**  
(Attach the completed Proof of Service to the Answer and file them at the Clerk's Office.)
- STEP 3**      **Landlord/Plaintiff's Request to Set Case for Trial**  
(Once your Answer is filed, the Landlord/Plaintiff will file a request to set case for trial at the Clerk's Office. This will cause a hearing date to be set within 20 days from the date of the request.
- STEP 4**      **Hearing**  
(Prior to the hearing, you should prepare your evidence and the Tenant's Trial Sheet (available at our Centers).)
- STEP 5**      **Writ of Possession/Notice to Vacate**  
(If the Landlord/Plaintiff wins the case, the Landlord/Plaintiff can obtain a writ of possession to move you out of the property. The Sheriff will post what is called a "Notice to Vacate." You will have five days from the date the Sheriff posts the Notice to Vacate to move-out.



# SU PRÓXIMO PASO

## LISTA DE PASOS QUE DEBE DE TOMAR EL PROPIETARIO/ DEMANDANTE

- Paso 1**      **Entregue la Nota de 3 o 30 o 60 o 90 días**  
(Usted debe esperar hasta que el tiempo indicado en la nota se venza antes de que Usted pueda archivar una demanda para un caso de desalojo con la Corte).
- Paso 2**      **Archive la Demanda en la ventanilla de vivienda del personal de la corte**  
(Si el inquilino no responde a la nota del día 3 o 30 o 60 o 90 días, Usted puede avanzar con la demanda de desalojo).
- Paso 3**      **Entregue la Demanda al inquilino/demandando**  
(Después de que Usted archivó su Demanda para Desalojo, alguien de 18 años o más edad tiene que entregar personalmente una copia de la Demanda al inquilino/demandado.)
- Paso 4**      **Archive la Prueba de Servicio de la Demanda en la ventanilla de vivienda del personal de la corte**  
(Después de que la demanda sea entregada al inquilino/demandado, la persona que le ayudó a Usted con el servicio, tiene que llenar la forma de la Prueba de Servicio. La forma de prueba de servicio tiene que archivarse en la ventanilla de vivienda del personal de la corte.)
- Paso 5**      **Archive la solicitud para un fallo por incomparecencia de la otra parte/ del Juicio En Cuyo Defecto O Archive la Peticion Poner el Caso Para Juicio**  
(1. Si el inquilino/demandado no archivó una Respuesta a la demanda, Usted puede archivar una petición para fallo por falta de comparecencia/el juicio en cuyo defecto. (SIGA AL PASO NUMERO 7)  
2. Si el inquilino/demandado archivó una Respuesta, Usted puede archivar una Peticion para Poner el Caso para Juicio. Esto causará que haya una audiencia dentro de 20 días de la fecha en que Usted archive su solicitud.)
- Paso 6**      **Audencia**  
(Antes de la audiencia, Usted debe de preparar su evidencia. También, prepare la lista de pasos que el Propietario debe de tomar para el juicio (disponible en nuestros centros) y el fallo de juicio).
- Paso 7**      **Obtenga una Escritura de Posesión**  
(Si Usted fue otorgado la posesión de la propiedad por un fallo por incomparecencia de la otra parte o por juicio del tribunal, Usted ahora puede solicitar que una Escritura de Posesión sea otorgada por los empleados de la Corte en la ventanilla de vivienda).
- Paso 8**      **El alguacil fija la Nota para Desocupar**  
Una vez que el Empleado de la corte de la ventanilla de vivienda publica la escritura de possession, Usted tendrá que llevar la documentacion al la oficina del los servicios de los alguaciles de la Corte para que sea procesada. El Alguacil va a fijar un documento llamado "Nota para Desocupar". El inquilino tiene cinco días, de la fecha que el Alguacil fija la Nota Para Desocupar, para mudarse.



# SU PRÓXIMO PASO

## LISTA DE VERIFICACION del Inquilino/Demandado

- Paso 1**      **Entregue la Respuesta al Demandante/Propietario**  
Que alguien de la edad de 18 años o mas envíe por correo regular una copia de la Respuesta al propietario/demandante. Después de que la Respuesta sea enviada al propietario/demandante, la persona que le ayudó a Usted a enviar la respuesta, esa misma persona tiene que llenar la forma titulada Prueba de Servicio.
- Paso 2**      **Archive la Respuesta con la Prueba del Servicio en la ventanilla de vivienda de los Empleados de la corte**  
(Añade la Prueba De Servicio a la la Respuesta y archive los documentos en la ventanilla de vivienda de los empleados de la Corte).
- Paso 3**      **Propietario/Demandante Solicita Poner el Caso para Juicio**  
Una vez de que su Respuesta es archivada, el Propietario/Demandante archivará la solicitud para poner el caso para juicio en la ventanilla de vivienda de los empleados de la Corte. Esto causara que una audiencia sea fijada dentro de 20 días de la fecha de la solicitud.
- Paso 4**      **Audencia**  
Antes de la audiencia, Usted debe preparar su evidencia y la Hoja de Preparacion para el juicio del Inquilino (disponible en nuestros Centros).
- Paso 5**      **Escritura de Posesión/Notificacion Para Desocupar**  
(Si el Propietario/Demandante gana el caso, el Propietario/Demandante puede obtener lo que es llamado un "Nota para Desocupar". Usted tendrá cinco días para mudarse de la fecha que el Alguacil fije la Nota para Desocupar.

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY OR PARTY WITHOUT ATTORNEY: <small>State Bar No.:</small>	<i>Reserved for Clerk's File Stamp</i>
ATTORNEY FOR (Name): <b>SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO</b>	
JUDICIAL DISTRICT:	
PLAINTIFF(s):	
DEFENDANT(s):	
<b>EX PARTE APPLICATION AND ORDER TO SERVE SUMMONS BY POSTING (Unlawful Detainer – C.C.P. §415.45)</b>	CASE NUMBER:

1. I am the     Plaintiff     Plaintiff's Attorney     Other (specify): \_\_\_\_\_
2. I apply for an order pursuant to C.C.P. section 415.45 to permit service by posting on the summons and complaint on defendant(s) (specify name(s)): \_\_\_\_\_  
\_\_\_\_\_
3. The complaint seeks possession of property located at : \_\_\_\_\_  
\_\_\_\_\_
4. The notice to quit or to pay rent or quit was served by:     personal service     substituted service  
 posting and mailing     other (specify): \_\_\_\_\_
5. At least three attempts to serve in a manner specified in C.C.P. article 3, chapter 4, title 5 (other than posting or publication) were made. A declaration(s) of process server(s) stating attempts to locate and serve the defendant(s) is attached and incorporated into this application by reference.
6. Service has been attempted during regular business hours at places(s) of employment of the defendant(s).  
 Service was not made during regular hours because:     The place(s) of employment of the defendant(s) is not known. or  Other \_\_\_\_\_
7. Did the plaintiff pay for help from a registered unlawful detainer assistant (Bus. and Prof. Code §§6400-6415) who helped prepare this form?     Yes     No. If yes, complete the following information:

NAME OF UNLAWFUL DETAINER ASSISTANT:	TELEPHONE NUMBER (    )
ADDRESS: (Mailing address, city, and ZIP code)	
REGISTRATION NUMBER:	COUNTY OF REGISTRATION:

<b><i>I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.</i></b>		
DATE:	TYPE OR PRINT PLAINTIFF'S NAME:	SIGNATURE OF PLAINTIFF:

Plaintiff: Defendant:	Case Number:
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## Declaration of Person Who Attempted Service on Defendant(s) (Attach to the Ex Parte Application)

DATE	TIME	LOCATION OF ATTEMPTED SERVICE	REASON SERVICE COULD NOT BE MADE/REMARKS

Process Server's Information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

I attempted to serve the Summons & Complaint on the defendant(s) named in the Complaint. The details of each attempt are stated above in this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own personal knowledge.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
*(date) (city where signed)*

\_\_\_\_\_  
*Signature of Person Who Attempted Service*

Plaintiff:	Case Number:
Defendant:	

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**FINDINGS AND ORDER**

THE COURT FINDS:

1. The defendant(s) named in the application cannot with reasonable diligence be served in any manner specified in C.C.P. article 3, chapter 4, title 5, other than publication.
2. (a) A cause of action exists against the defendant(s) named in the application; **or** (b) the defendant(s) named in the application has or claims an interest in real property in California that is subject to the jurisdiction of the court **or** (c) the relief demanded in the complaint consists wholly or partially in excluding the defendant(s) from any interest in the property.

THE COURT ORDERS:

The defendant(s) named in the application may be served by posting a copy of the summons and complaint on the premises in a manner most likely to give actual notice to the defendant(s), and by immediately mailing, by certified copy of the summons and complaint to the defendant(s) at his/her last known address.

DATE: \_\_\_\_\_

\_\_\_\_\_  JUDGE     COMMISSIONER



# MOBILEHOME EVICTION GUIDE

## (Civil Code §798.55 – 798.61)

### SEVEN AUTHORIZED REASONS FOR TERMINATION OF TENANCY

1. Failure to comply with a local ordinance or state law or regulation relating to mobilehomes within a reasonable time after the homeowner receives a notice of noncompliance from the appropriate governmental agency.
2. Conduct by the homeowner or resident, upon the park premises, that constitutes a substantial annoyance to other homeowners or residents.
3. Conviction of the homeowner or resident for prostitution, battery resulting in serious bodily injury, assault with a firearm, lewd or lascivious act with a minor, or arson, or a felony controlled substance offense, committed anywhere on the premises of the mobilehome park.
4. Failure to comply with a reasonable rule or regulation of the park that is part of the rental agreement after 7 days written notice.
5. Nonpayment of rent, utility charges, or reasonable incidental service charges after 5 day grace period.
  - 3-Day Notice to Pay or Quit can be served after the 5 day grace period.
  - A copy of this notice shall be sent to the legal owner, junior lien holder or registered owner if other than the homeowner, within 10 days after notice is delivered to the homeowner if not cured.
  - The 3-Day Notice may be given at the same time as the 60 days' notice required for termination of the tenancy.
  - A 3-Day Notice shall contain the following provisions printed in at least 12-point boldface type at the top of the notice, with the appropriate number written in the blank:

“Warning: This notice is the \_\_\_\_\_ three-day notice for nonpayment of rent, utility charges, or other reasonable incidental services that has been served upon you in the last 12 months. Pursuant to Civil Code Section 798.56(e)(5), if you have been given a three-day notice to either pay rent, utility charges, or other reasonable incidental services or to vacate your tenancy on three or more occasions within a 12-month period, management is not required to give you a further three-day period to pay rent or vacate the tenancy before your tenancy can be terminated.”

- The legal owner, any junior lienholder, or the registered owner, if other than the homeowner, may cure the default on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice to the legal owner, each junior lienholder, and the registered owner.
  - The legal owner, any junior lienholder, or the registered owner, may not cure a payment default more than twice during a 12-month period.
- If a homeowner has been given three or more 3 Day Notices within the preceding 12-month period and each notice includes the provisions specified in paragraph (1), no further written

3 Day Notice is required for subsequent nonpayment of rent, utility charges, or reasonable incidental service charges.

- In that event, the management shall give 60 Day Notice to the homeowner to remove the mobilehome from the park. A copy of this notice shall be sent to the legal owner, each junior lienholder, and the registered owner of the mobilehome, if other than the homeowner, by certified or registered mail, return receipt requested, within 10 days after notice is sent to the homeowner.
- When a copy of the 60 days' notice described in paragraph (5) is sent to the legal owner, each junior lienholder, and the registered owner of the mobilehome, if other than the homeowner, the default may be cured by any of them on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice, **if all of the following conditions exist:**
  - (A) A copy of a 3-Day Notice to Pay or Quit was not sent to the legal owner, junior lienholder, or registered owner, of the mobilehome, if other than the homeowner, during the preceding 12-month period.
  - (B) The legal owner, junior lienholder, or registered owner of the mobilehome, if other than the homeowner, has not previously cured a default of the homeowner during the preceding 12-month period.
  - (C) The legal owner, junior lienholder or registered owner, if other than the homeowner, is not a financial institution or mobilehome dealer.

6. Condemnation of the park.

7. Change of use of the park or any portion thereof. (See code for detailed requirements)

#### **NOTICE REQUIREMENT OF LEGAL OWNER/JUNIOR LIENHOLDER**

- (a) Within 60 days after receipt of, or no later than 65 days after the mailing of, the notice of termination of tenancy pursuant, the legal owner, if any, and each junior lienholder, if any, shall notify the management in writing of at least one of the following:
  - (1) Its offer to sell the obligation secured by the mobilehome to the management for the amount specified in its written offer.
  - (2) Its intention to foreclose on its security interest in the mobilehome.
  - (3) Its request that management pursue termination of tenancy against the homeowner and its offer to reimburse management for the reasonable attorney's fees and court costs incurred by the management in that action.
- (b) A legal owner, if any, or junior lienholder, if any, may sell the mobilehome within the park to a third party and keep the mobilehome on the site within the mobilehome park until it is resold only if all of the following requirements are met:
  - (1) Management is notified in writing of the intention to exercise either option described in paragraph (2) or (3) above within 60 days following receipt of, or no later than 65 days after the mailing of, the notice of termination of tenancy and satisfies all of the responsibilities and liabilities of the homeowner owing to the management for the 90 days preceding the mailing of the notice of termination of tenancy and then continues to satisfy these responsibilities and liabilities as they accrue from the date of the mailing of that notice until the date the mobilehome is resold.
  - (2) Within 60 days following receipt of, or no later than 65 days after the mailing of, the notice of termination of tenancy, the legal owner or junior lienholder commences all

repairs and necessary corrective actions so that the mobilehome complies with park rules and regulations in existence at the time the notice of termination of tenancy was given as well as the health and safety standards specified in Sections 18550, 18552, and 18605 of the Health and Safety Code, and completes these repairs and corrective actions within 90 calendar days of that notice, or before the date that the mobilehome is sold, whichever is earlier.

- (3) The legal owner, if any, or junior lienholder, if any, complies with all legal requirements of transfer of the mobilehome to a third party.
- (c) If the registered owner or lien holder does not comply with the above options, and or the homeowner is evicted or vacates the mobilehome, the management may either remove the mobilehome from the premises and place it in storage or store it on its site. In this case, a warehouseman's lien is created against the mobilehome for the costs of dismantling and moving, if appropriate, as well as storage and may enforce the lien pursuant to Section 7210 of the Commercial Code either after the date of judgment in an unlawful detainer action or after the date the mobilehome is physically vacated by the resident, whichever occurs earlier. Upon completion of any sale to enforce the warehouseman's lien in accordance with Section 7210 of the Commercial Code, the management shall provide the purchaser at the sale with evidence the sale, as shall be specified by the Department of Housing and Community Development, that shall, upon proper request by the purchaser of the mobilehome, register title to the mobilehome to this purchaser, whether or not there existed a legal owner or junior lienholder on this title to the mobilehome.
- (d) All written notices required by this section shall be sent to the other party by certified or registered mail with return receipt requested.
- (e) Satisfaction, pursuant to this section, of the homeowner's accrued or accruing responsibilities and liabilities shall not cure the default of the homeowner.

## **RESOURCES FOR INFORMATION AND ASSISTANCE ON MOBILEHOME ISSUES**

Golden State Manufactured-Home Owners League (gsmol)  
tel 714.826.4071

California Mobilehome Resource & Action Association (cmraa)  
tel 408.244.8134

National Association of Manufactured Home Owners (namho)  
tel 717.284.4520

Mobilehome Ombudsman  
tel 1.800.952.5275 (toll free)  
or 916.323.9801

## QUICK GUIDE TO NOTICES TO TENANTS

### **3 Day Notice to Pay or Quit (CCP §1161.2)**

- Can only claim unpaid rent for the past 12 months
- Notice must state the exact amount of rent (residential only) and the dates for which the rent is due (e.g. July 1 to July 31, 2008). For commercial leases, the landlord may demand estimated rents due.
- May only include actual rent due. Do not add late fees, other damages, attorney fees, utilities, etc.
- Must specify the manner in which payment is to be made. If it is to be paid in person, the notice must give the name to whom payment must be made, address, and dates and times available to receive payment. If payment to be made by mail, must give the mailing address.
- Should state election of forfeiture of rental agreement/lease. Otherwise, the tenant may be allowed to remain in possession of the premises after payment of a money judgment.

### **3 Day Notice to Comply or Quit (CCP §1161.3)**

- For use if the tenant is committing a curable breach of the rental agreement (e.g. subletting; parking in the wrong area; not keeping the premises clean).
- Notice must be stated in the alternative (i.e. correct the violation or vacate within 3 days).
- Notice must specify the violation.

### **3 Day Notice to Quit**

- May be used when the tenant commits a non-curable breach of the rental agreement; nuisance; uses the premises for illegal activity (e.g. selling drugs, prostitution); threatens the health and safety of other tenants or the general public; or causes significant damage to the property. Notice must specify in detail the cause for the notice. (CCP §1161.4)
- May also be used by new owner to evict previous owner after sale of the property pursuant to a writ of sale, pursuant to a writ of execution following judicial foreclosure proceedings, sale by the owner, under a power of sale contained in a deed of trust, or under the default provisions of a conditional sale contract or security agreement. (CCP §1161a(b))

### **30 Day Notice of Termination**

- May be used to terminate a rental agreement where the tenant is on a month-to-month tenancy and has resided in the premises for less than one year.
- Landlord is not required to give a reason for the termination. However, the landlord may not terminate the tenancy for a “bad” or unlawful reason (e.g. retaliation against tenant for exercising a legal right).
- Required to evict a tenant/subtenant following the sale of the premises. If after foreclosure, must use 90 day notice.

### **60 Day Notice of Termination**

- Required instead of 30 Day Notice where the tenant has resided in the premises for one year or more.
- Required for mobilehome park tenants to remove the mobilehome.

### **90 Day Notice of Termination**

- Required for eviction of a tenant or subtenant following the sale of the premises at foreclosure. This does not apply if the tenant/subtenant is a party to the note that was foreclosed upon (use 3 Day Notice to Quit).
- Required if the tenant is in subsidized housing (Section 8). Landlord may still use a 3 Day Notice to Pay or Quit if rent is overdue.
  - Just Cause required if served during the first year of tenancy. Must specify the reason for termination.
  - No reason required after first year of tenancy. However, the landlord may not terminate the tenancy for an unlawful reason (e.g. retaliation against tenant for exercising a legal right).

ALL NOTICES MUST STATE THE TENANTS' FULL NAMES, THE ADDRESS OF THE PREMISES, AND INCLUDE THE LANDLORD OR MANAGER'S SIGNATURE AND DATE OF THE NOTICE.

## **WHEN DO I HAVE TO FILE A RESPONSE TO THE EVICTION?**

If you are personally served with a Summons and Complaint-Unlawful Detainer, you have five calendar days to respond. You must count every single day, including weekends, but not court holidays.

The five days start *the day after you are served with the Summons and Complaint*. If the fifth day is on a weekend or a holiday when the court is closed, your answer is due the very next day the court is open.

If the court holiday does not fall on the fifth day, you do not count that day in counting the five days. This gets a little complicated so you may want to get some legal advice on when your answer is due.

REMEMBER: you do NOT have to wait until the fifth day to file your answer, If you have any doubt about the date on which you were served, file on a earlier date to avoid having a default judgment taken against you.

The chart below may be helpful.

<b>Complaint Served</b>	<b>Last Day to Respond</b>	<b>Intervening Monday* Judicial Holiday</b>
Monday	Monday	Tuesday
Tuesday	Monday	Tuesday
Wednesday	Monday	Tuesday
Thursday	Tuesday	Wednesday
Friday	Wednesday	Thursday
Saturday	Thursday	Friday
Sunday	Friday	Monday

## **GUIDE TO CLAIM OF RIGHT TO POSSESSION UNLAWFUL DETAINER**

The following procedure is for use when tenants/occupants are not named in the unlawful detainer complaint, but claim a right to possession of the property.

### PREJUDGMENT CLAIM OF RIGHT TO POSSESSION (CCP §1174.25)

- A. Optional form that may be served with the summons and complaint on unnamed and unknown occupants of the premises. Service must be made by the sheriff or registered process server.
- B. Occupant has 10 days from service to file the Prejudgment Claim of Right to Possession. Filing a claim is considered a general appearance requiring a filing fee. The claimant will then be added as a defendant.
- C. Claimant must serve and file an answer within 5 days after filing the Prejudgment Claim of Right to Possession.
- D. If the plaintiff serves a Prejudgment Claim of Right to Possession with the summons and complaint, default cannot be entered against the unnamed occupants until after the 10 day response time. Default can, however, be entered against the named defendants that were served.

### CLAIM OF RIGHT TO POSSESSION (CCP §1174.3) (For use by unnamed occupants after entry of judgment)

- A. Unless the prejudgment claim of right to possession was served on the occupant, any occupant not named in the judgment for possession who occupied the premises on the date of the filing of the action may object to enforcement of the judgment by filing a claim of right to possession.
- B. Time for Filing: Claim may be filed at any time after service or posting of the writ of possession up to and including the time the sheriff comes out to evict the named defendants.
- C. How to Present and File a Claim
  - 1. Present the completed form to the levying officer at the office of the officer or at the premises at the time of the eviction. (it would be best to present a copy with the original)
    - a) The sheriff will stop the eviction;
    - b) Provide a receipt or copy of the claim to the claimant indicating the date and time the completed form was received; and
    - c) Deliver the original claim to the court.
  - 2. Within 2 days, the claimant must pay the appearance fee at the court to complete the filing. If the filing fee is not paid, the claim will be immediately denied.

3. If the claimant also gives the court an amount equal to 15 days rent, the court will set the hearing for between 5 and 15 days after filing.

If 15 days rent is not submitted with the appearance fee, the hearing will be held on the 5<sup>th</sup> day after filing.

4. The court will mail notice of the hearing to the plaintiff and claimant.

D. At the hearing court will consider all evidence presented at the hearing to determine the validity of the claim of right to possession.

E. Invalid Claim

1. The claim is invalid if the court determines that the claimant is an invitee, licensee, guest, or trespasser.
2. If claim is invalid, the court will order return of the 15 days rent, if paid, minus the pro rata amount for each day that enforcement of the judgment was delayed. That amount will be paid to the landlord.
3. Court will order the levying officer to proceed with enforcement of the judgment within 5 days.

F. Valid Claim

1. If the complaint is based on a curable breach, and the claimant was not previously served with proper notice, then the notice may be served at or after the hearing. If the claimant does not cure the breach within the required time, the plaintiff may file and serve a supplemental complaint. The notice and supplemental complaint may be served by mail. Claimant has 10 days from mailing to answer.
2. In all other cases, the summons and complaint are deemed amended on their face to include the claimant as defendant. Service of the summons and complaint may be made at or after the hearing. Claimant has 5 days to answer after service.

## DEFENSES TO EVICTION:

You don't have to **prove** your side of the story until your trial. When you fill out your Answer, you are just telling your landlord and the judge what **you will try to prove** at trial. On the first page of your Answer, you can check boxes in Paragraph 3 to explain the reason(s) you should not be evicted. You can give more information on the second page in Paragraph 3 j.

**These are the defenses listed on the Answer form (3a-i) which may apply to your case.**

- (a) **Habitability/Repairs.** When you have asked the manager or owner to repair conditions that are dangerous to your health or safety and he/she has not done so.\*
- (b) **Repair and Deduct.** When you informed your landlord (preferably in writing) of your intention to make repairs to your home and to subtract the cost of repairs from your rent. This applies if your landlord didn't make repairs at all, or didn't do so in a reasonable time and you did the repairs.\*
- \*NOTE: For (a) and (b), even if you convince the judge that you don't owe full rent, you will lose your case if you can't pay the reduced amount of rent that the judge says you owe.*
- (c) **Landlord Refused Rent Within the 3 Days.** When you offered the owner or manager the rent money during the three-day period of the notice, but the owner/manager refused to accept it. Write in the date that you offered to pay the rent.
- (d) **Landlord Canceled the Eviction Notice.** When the owner or manager has done something to change or cancel the 3-day, 30-day, or 60-day notice. For example: if the owner told you to forget about the 3-day notice or that you could pay rent later in the month.
- (e) **Retaliation.** When you believe that the manager or owner is evicting you *because* you requested repairs, called the Health Department or Police Department, started a tenants' association, or did any other act that is protected by state or federal law.
- (f) **Discrimination.** When you believe that the owner or manager is evicting you because you belong to a certain protected category of people. This includes evictions based on your race; sex; sexual orientation; religion; national origin; mental or physical disability; because you have children; receive welfare, etc.
- (g) **This does not apply** unless there is a local rent control ordinance.
- (h) **Landlord Took Your Rent.** When the owner or manager accepts rent money from you for a period of time beyond the date that your 3-day, 30-day or 60-day notice expired. For example: if your 60-day notice expired on May 10<sup>th</sup>, but your landlord accepted full rent for May.
- (i) Check this box if you have **other defenses to the eviction.**



Check the boxes on the Answer form that fit your case.

Next, write or type the facts that apply to your defense on box 3 j on the back page of the Answer. Be sure to write in the specific paragraph number from the front page before you state the facts of your defense.

Check all the boxes that you think apply to your situation, but don't overdo it. Help the court to focus on your strongest and best defenses. Details are important, **but remember that judges like explanations that are as brief as possible.** Even one good defense can be sufficient.

**IMPORTANT:**      **You should have the past due rent money by the time of trial, but check all defenses that apply even if you don't or won't have the money.**

#### **WHAT IF I DON'T SEE ANY DEFENSES FOR MY CASE?**

If you think you have a defense, but you don't see it listed on the Answer form, you can check box 3 i on the first page of the Answer and then type or print the facts in your own words in box 3 j on the back page of the Answer.

**Regardless of whether you have good defenses, you must file an Answer in order to avoid having a Default Judgment entered against you.**

#### **WARNING**

If your situation does not fit into one of the defenses on the Answer, it is probably not a legal defense to an eviction. The landlord can evict you if you do not have any money or a place to move, You can still file an Answer and write down what happened in the space under 3j, but don't have false hopes.

After you file your Answer, use the next few days to think about settling your case and/or moving before the trial date.

## **PREPARING YOUR CASE FOR TRIAL**

### **QUESTIONS AND ANSWERS ON A DEFECTIVE 3-DAY NOTICE TO PAY RENT OR QUIT**

The landlord is trying to evict you based on the landlord's claim that you did not pay the rent or leave after you were served with a Three Day Notice to Pay or Quit. If your landlord or his attorney made a mistake in the Notice, you may have a defense. This handout will explain the law and how you prove your case to the judge.

#### **WHAT IF MY LANDLORD IS ASKING FOR MORE MONEY THAN HE IS ENTITLED TO?**

The landlord is trying to evict you because he claims that you have not paid your rent. However, your landlord cannot evict you, even if you owe rent, if the amount of rent he claims is MORE than what is owed or he wants the rent owed plus money which he cannot lawfully collect in this kind of lawsuit.

#### **HOW CAN I PROVE THAT I PAID ALL OR PART OF THE RENT THE LANDLORD IS ASKING FOR?**

The best way to convince the judge that you owe less than the landlord claims is with documents. Use the 3-day notice you received to prove how much rent the landlord asked for. To prove how much rent, if any, you owe, use receipts or cancelled checks showing how much rent you have paid during the past months.

#### **HOW CAN I PROVE THAT THE LANDLORD IS ASKING FOR MORE THAN JUST RENT?**

You can use your rental agreement and/or recent rent receipts to prove how much rent you pay. Sometimes the landlord will ask for something other than rent on the notice itself. The 3-day notice can then be used to show that the landlord is asking for more than just rent.

#### **WHAT IF THE LANDLORD GAVE ME THE THREE DAY NOTICE BEFORE THE RENT WAS DUE?**

The landlord cannot evict you on the basis of a Three Day Notice to Pay or Quit if he gave you the notice before your rent was late. For example, if your rent is due on the first of each month and the landlord wants to evict you because you did not pay the rent due on February 1<sup>st</sup>, the landlord must wait until February 2<sup>nd</sup> before giving you the Notice to Pay or Quit. The law provides that if your rent is due on Saturday, Sunday or a legal holiday, you do not have to pay the rent until the next business day. For example, if your rent is due on the first of the month and the first day of September was a Saturday, the landlord cannot give you a proper Three Day Notice to Pay Rent or Quit until the next

Tuesday. That’s because the rent does not have to be paid until Monday, and if not paid, it is not late until Tuesday.

**WHAT IF THE 3-DAY NOTICE DOES NOT GIVE ME THE CHOICE OF PAYING OR MOVING?**

The law says that a landlord must give you the “alternative” of either paying the rent or moving out. The landlord cannot evict you if he did not give you that choice in the Notice.

**WHAT IF MY LANDLORD FILED THE COMPLAINT BEFORE THE 3 DAYS WERE UP?**

The landlord cannot file a court case to evict you until at least 3 days after you were served with a Notice to Pay or Quit. In counting the 3 days, it is the date that the notice was served on you, and not the date written on the notice that starts the three days.

You begin counting day one on the day after you got the notice. Weekends and holidays do count; however, if the third day is a holiday or a weekend, you have until midnight of the next business day to pay the rent. Find the day you were served with the three day notice in Column “A” below. You must move or pay the rent no later than the day listed in Column “B.” If the last day to pay is a legal holiday, you have until the next business day. If you do neither, Column “C” shows the first day that the landlord can file the court case against you.

<b>Column A (DAY SERVED)</b>	<b>Column B (LAST DAY TO PAY)</b>	<b>Column C (FIRST DAY HE CAN FILE)</b>
<b>Sunday</b>	<b>Wednesday</b>	<b>Thursday</b>
<b>Monday</b>	<b>Thursday</b>	<b>Friday</b>
<b>Tuesday</b>	<b>Friday</b>	<b>Monday</b>
<b>Wednesday</b>	<b>Monday</b>	<b>Tuesday</b>
<b>Thursday</b>	<b>Monday</b>	<b>Tuesday</b>
<b>Friday</b>	<b>Monday</b>	<b>Tuesday</b>
<b>Saturday</b>	<b>Tuesday</b>	<b>Wednesday</b>

**3-DAY NOTICE OVERSTATES RENT DUE**

1. I live at \_\_\_\_\_
2. I pay \_\_\_\_\_ per month rent.
3. The 3-day notice asks for \$\_\_\_\_\_ for the period from \_\_\_\_\_  
to \_\_\_\_\_ .
4. I do not owe this much money.
5. I have rent receipts to show I have paid rent that Plaintiff has not given me credit for the rent I paid..

Here is a receipt dated \_\_\_\_\_ for \_\_\_\_\_.

I ask that this receipt be admitted into evidence.

OR

My landlord has included non-rent items in the 3-day notice.

They are \_\_\_\_\_ .

6. I only owe \_\_\_\_\_ or
7. I do not owe any rent.

\* \* \*

**CLOSING STATEMENT**

The landlord has asked for too much money in the 3-day notice. I have shown the Court today that I do not owe that amount. The law says that a landlord must state the specific amount owed in the 3-day notice. Here Plaintiff has overstated the amount of rent due by \_\_\_\_\_. Therefore, I ask for judgment for Defendant.

**COMPLAINT FILED BEFORE END OF NOTICE PERIOD**

1. The complaint was filed before the notice time was up.
2. I received the Three Day Notice to Pay or Quit on \_\_\_\_\_  
\_\_\_\_\_.
3. The third day after I received the notice was \_\_\_\_\_.
4. I ask the court to take judicial notice of the fact that \_\_\_\_\_  
is a Saturday/Sunday/holiday.
5. According to Civil Code Section 10 and Code of Civil Procedure Sections 12 to  
13b, the notice did not end until \_\_\_\_\_.
6. The complaint in this case was filed on \_\_\_\_\_.

\* \* \*

**CLOSING STATEMENT**

The complaint was filed before the notice period was over. Therefore, Plaintiff has failed to follow the requirements for an eviction action. The law says that Plaintiff must “strictly comply.” He/she has not. Therefore, I ask for judgment for Defendant.

## **PREPARING YOUR CASE FOR TRIAL**

### **DEFECTIVE 30/60 DAY NOTICE**

Your landlord is trying to evict you because you failed to move after receiving a Thirty Day Notice to Quit or a Sixty Day Notice to Quit. You may have a defense if the landlord or his attorney made a mistake in the notice. This handout explains the most common mistakes.

#### **I**

#### **WHAT IF THE NOTICE DOES NOT GIVE ME THIRTY OR SIXTY DAYS TO MOVE AFTER IT WAS SERVED?**

The landlord cannot file a court case against you if you have a month to month rental agreement and you have lived at the property less than a year until at least thirty days after the notice was served on you. If you have lived at the property a year or more, you must be given a sixty day notice to move. In counting the days, use the date that the notice was served on you, and not the date written on the notice. Also, if the last day of the notice is a weekend or a holiday, you have until the next business day to move and the landlord must wait until the following day before he can file an eviction.

#### **II**

#### **WHAT IF THE LANDLORD ACCEPTS RENT AFTER SERVING THE THIRTY DAY OR SIXTY DAY NOTICE?**

A landlord who waives a Thirty or Sixty Day Notice to Quit cannot file a court case to evict you. The law says that a landlord waives a Thirty Day or Sixty Day Notice to Quit if he accepts rent for any time after the Notice ends. For example, your rent is due on the first of each month. On September 30 the landlord serves you with a Thirty Day Notice to Quit (under the notice you must move by October 30). On October first you pay your full rent for the month. Since the Notice ends on October 30 and the landlord accepted rent until October 31 he has waived the Notice.

**THE COMPLAINT WAS FILED PREMATURELY**

1. I live at \_\_\_\_\_.
2. On \_\_\_\_\_, I was served with a Thirty/Sixty Day Notice.
3. I received the notice on \_\_\_\_\_ by \_\_\_\_\_.  
(Personal service, serving someone at my residence and mailing a copy, posting a copy and mailing a copy, certified/registered mail).
4. The Complaint was filed on \_\_\_\_\_.
5. I did not get thirty/sixty days before the Complaint was filed.

**THE LANDLORD WAIVED THE NOTICE**

1. I live at \_\_\_\_\_.
2. On \_\_\_\_\_, I was served with a Thirty/Sixty Day notice to move.
3. The last day of the thirty/sixty day notice period was \_\_\_\_\_.
4. On \_\_\_\_\_, I paid rent that covers the period from \_\_\_\_\_  
to \_\_\_\_\_. (Rent must have been paid to cover days after the  
thirty/sixty day notice period expired).
5. The landlord accepted rent for a period after the thirty/sixty day notice expired.

**THE LANDLORD SERVED THE WRONG NOTICE**

1. I live at \_\_\_\_\_.
2. I moved in on \_\_\_\_\_. Here is a copy of my rental  
agreement.
3. I was served with a Thirty Day Notice to Terminate tenancy on  
\_\_\_\_\_.
4. I have lived at the property for \_\_\_\_\_ ( must be a year or more as of  
the date the notice was served).

5. I should have been served with a Sixty Day Notice to Terminate Tenancy.



## **PREPARING YOUR CASE FOR TRIAL**

### **QUESTIONS AND ANSWERS ON THE HABITABILITY DEFENSE**

#### **WHAT IS A HABITABILITY DEFENSE?**

Your landlord is trying to evict you because the landlord claims that you owe rent. It is legal to refuse to pay your rent or withhold your rent if the landlord did not repair problems he/she knew about or if the landlord refuses to keep your place fit to live in (habitable). If your place has seriously defective conditions, the landlord may not legally be entitled to ask for the full amount of rent he/she claims you owe.

A tenant does not have to pay full rent if:

1. There are serious conditions which affect a tenant's health and safety; AND
2. The landlord knew about the problems but did not fix them; AND
3. The tenant or the tenant's family did not cause the problem or refuse to allow it to be corrected.

#### **WHAT TYPES OF PROBLEMS ARE CONSIDERED?**

The law does not require the landlord to keep your apartment in perfect condition. A few cockroaches or one broken screen are probably not enough to allow you to stop paying your rent. The law does not even require your landlord to paint your home every year or to provide you with or new rugs. The landlord must provide these basic services:

1. Plumbing that works;
2. Hot and cold running water and enough hot water to wash and bathe;
3. A heater for your home that works;
4. Electricity and lights which work and are safe;
5. Window screens to keep out the bugs and insects;
6. Sufficient extermination to keep out roaches, fleas, bugs and/or mice or rats;
7. Clean common areas free from trash and debris;
8. Enough trash cans to keep trash from overflowing; and
9. Safe and secure stairways and railings.
10. Operable deadbolt locks on the main entry doors and operable locking or security devices on the windows.

## **DO I HAVE TO TELL MY LANDLORD ABOUT THE PROBLEM BEFORE I WITHHOLD MY RENT?**

Yes, in most cases, unless the landlord already knew or should have known about the problem. The landlord is entitled to be informed of the problem. Most tenants inform the landlord by telling the manager which is as good as telling the landlord. You might also have notified the owner or manager by calling out the Health Department to inspect your premises. They will then give the owner a notice in writing to correct conditions they say violate the law.

A landlord is not required to fix everything you complain of within several hours. The more serious the condition, the more quickly the landlord should act. For example, if your toilet does not work, you should be able to expect the landlord to get it fixed very quickly. A torn window screen would not be so serious and the landlord would have more time to repair and replace it.

## **WHAT HAPPENS IF I CAUSED THE DAMAGE OR IF MY CHILDREN DID?**

Landlords often claim that the tenant or tenant's family caused the problem such as a toilet that backed up because the tenant's child flushed something down the toilet. The law does not require the landlord to fix at his/her cost a problem that a tenant or the tenant's family or friend has created.

Landlords also commonly complain that they would have fixed a problem, but the tenant would not let them in to fix it. The law will not protect a tenant who refuses to allow access for repairs. You do not have to let a repairman or your landlord into your apartment in the middle of the night or without any notice at all unless there is an emergency, but be reasonable.

## **WHAT HAPPENS IF I WIN MY CASE? DO I HAVE TO PAY THE BACK RENT?**

If you are able to convince the judge at your trial that the landlord knew about the defective conditions and would not repair them and that the conditions were dangerous to your health and safety, the judge will decide how much of your back rent you will have to pay the landlord. The amount of rent you have to pay will depend on the condition of the apartment. The judge will also order the landlord to make the necessary repairs. The judge will normally give you only a few days to pay the money to the landlord. If you do not pay on or before the date set by the judge, the landlord automatically wins without even having to go to court again.

**REMEMBER!! SET YOUR MONEY ASIDE SO YOU WILL HAVE IT AT YOUR TRIAL.**

## **WHAT ARE SOME WAYS TO PROVE THAT DEFECTIVE CONDITIONS EXIST?**

There are several ways to convince a judge that there is a problem in your home.

1. Pictures. This is the best way, since it shows the judge clearly what you have had to live with. They can be photographs you took to show the problem.
2. Official Records. If you or a neighbor complained to the Health Department, there is probably an official record of the inspection. Call the Health Department and ask if there is a record. If there is, tell them you want a “certified” copy (there will be a stamp on it, which means that it is a correct copy of the report). Ask how and where to get it. If the report is not “certified” it can’t be used as evidence in court. If the Health Department refuses to give you a “certified” copy, you will have to subpoena the record.
3. Witnesses. Witnesses may include you, neighbors and friends, so long as they have personally observed the conditions you are complaining about. Even a child can be a witness so long as the child is old enough to know the difference between the truth and a lie.

### **HOW CAN I PROVE MY LANDLORD KNEW ABOUT THE PROBLEM?**

You can testify that you told the manager or the landlord or that the landlord has been to your home many times. If someone was with you on an occasion when you complained, have that person testify as a witness to your complaint. If you have any copies of the letters written by you to the landlord complaining about conditions, those are the best evidence. Your Health Department record, if you can get one, is also evidence of notice to your landlord since the Health Department always sends a copy of the inspection report to the owner.

### **PREPARE YOUR CASE FOR TRIAL AHEAD OF TIME**

Everyone who testifies in court is nervous. To make sure that you don’t forget to tell the judge something important in your case, prepare your case NOW. Make sure you have all the evidence you need to prove your case. Review your information handouts and your evidence several times before going to court.

**TRIAL OUTLINE OF HABITABILITY DEFENSE**

1. The landlord is not entitled to all of the rent he/she has asked for in the 3-day notice because the apartment/house is not worth \$\_\_\_\_\_ per month.  
(your monthly rent)
  
2. There are many problems with the conditions of the premises that I can show in pictures.
  - a). One problem is \_\_\_\_\_  
(Here is a picture of this problem).
  
  - b). Another problem is \_\_\_\_\_  
(Here is a picture of this problem).
  
  - c). Another problem is \_\_\_\_\_  
(Here is a picture of this problem).
  
  - d). Another problem is \_\_\_\_\_  
(Here is a picture of this problem)
  
  - e). Another problem is \_\_\_\_\_  
(Here is a picture of this problem)
  
3. All the pictures accurately show what my home looks like. I ask that they be admitted into evidence. Don't forget this important step!!
  
4. I also have problems that cannot be shown in pictures. They are:  
  
\_\_\_\_\_  
  
\_\_\_\_\_
  
5. I also have an infestation of: \_\_\_\_\_  
(Cockroaches, mice, rats, etc.)
  
6. I have had these problems since \_\_\_\_\_
  
7. I asked my landlord to fix these problems on \_\_\_\_\_  
  
\_\_\_\_\_
  
8. I sent a letter to my landlord on \_\_\_\_\_. Here is a copy of the letter. I ask that it be admitted into evidence.
  
9. The Health Department inspected my home on \_\_\_\_\_

10. Here is a certified copy of the Health Department report. I ask that this Health Department report be admitted into evidence.

11. The landlord has not repaired anything.

**OR**

12. The landlord has made some, but not all the repairs.

12a. The things the landlord repaired are: \_\_\_\_\_

\_\_\_\_\_

12b. The things the landlord has NOT repaired are: \_\_\_\_\_

\_\_\_\_\_

13. The value of my home has been reduced by these problems.

\* \* \*

**CLOSING STATEMENT**

The plaintiff has failed to maintain and repair my apartment.

In the present condition, my apartment is not worth the agreed to rent. I ask this Court to give a judgment for Defendant.

I ask this Court to determine the reasonable rental value and give me an opportunity to pay this amount.

## **PREPARING YOUR CASE FOR TRIAL**

### **THE DISCRIMINATION DEFENSE (Thirty and Sixty Day Notices)**

By trying to evict you, the landlord may be discriminating against you or your family. The law says that the landlord cannot discriminate against you or try to evict you simply because of:

1. Your race or ethnic group;
2. Your religion, national origin or ancestry;
3. Your sex;
4. Your marital status (i.e., unmarried, living together);
5. Your physical or mental disability;
6. Your receipt of welfare or public assistance;
7. Your familial status (you have children); and/or
8. Your sexual orientation.

### **HOW DO YOU PROVE DISCRIMINATION?**

There are several ways to show that a landlord is trying to evict you on a discriminatory basis:

1. You can show that the landlord is not trying to evict other tenants who are different from you (for example, no other tenants have children).
2. You can show that the landlord's claimed reason for his evicting you is not true;
3. You can show that the landlord (or manager) said or did something which shows a discriminatory intent. In order to do that, you can testify or you can have witnesses testify.

These cases are very hard to prove because most landlords won't tell you why they want you to move. You should look carefully at events that happened before the notice was served and at the way other tenants are treated by the landlord. California law allows landlords to evict tenants without giving a reason in most cases, but California law does not allow landlords to evict tenants for an unlawful reason such as discrimination.

## **TRIAL CHECKLIST**

**DISCRIMINATION**

1. Plaintiff is trying to evict me for an illegal reason.

2. Plaintiff is discriminating against me because of:

\_\_\_\_\_

(give reasons)

3. The reasons I think Plaintiff is discriminating against me are:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. On \_\_\_\_\_, the landlord said:

\_\_\_\_\_

5. The Plaintiff is not trying to evict anyone else, only me.

6. Plaintiff says he/she is evicting me because \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. Plaintiff is only trying to cover up his/her discrimination.

8. Plaintiff should not be allowed to evict me for this discriminatory reason.

\* \* \*

**CLOSING STATEMENT**

**Plaintiff is trying to evict me for an illegal reason. He/she is discriminating against me. The reason he/she gives for evicting me is not true. If the landlord has not stated a reason, state that the real reason he/she is evicting me is that I am ( \_\_\_\_\_ ) For example state that you are disabled. Therefore, state the group or category you belong to. the eviction notice is invalid. I ask for judgment for defendant.**

## **PREPARING YOUR CASE FOR TRIAL**

### **THE RETALIATION DEFENSE**

One of your defenses to the eviction case may be that the landlord is retaliating against you because you did something you had a right to do. These materials will help explain the law and give you some suggestions on how to prepare your case.

#### **The law says that the landlord cannot retaliate against you in certain situations.**

The law says that the landlord cannot evict you to retaliate against you because you:

- Called the Health Department or Housing Inspector or other government agencies about the condition of your home;\*
- Used your right to repair problems and deduct the cost from your rent;\*
- Organized with other tenants or formed a tenants' association;
- Did anything else you had a constitutional right to do such as complaints to the landlord about the condition of your place.

#### **Proving retaliation in court may be difficult.**

Since it is hard to prove what is really on the landlord's mind, the law presumes that the landlord is retaliating against you if the landlord tries to evict you within 180 days after the last date on which:

1. You gave the landlord a notice that you would make repairs and withhold the cost from your rent;\*
2. You complained to the landlord about the condition of your home;\*
3. You complained to the Housing Inspector about the condition of your home;\*
4. An agency inspected your home or issued a citation to the owner;\*
5. You filed a lawsuit or Small Claims case against the landlord about the condition of your home.\*

\*In order to use this provision of the law, you must be current in your rent. In other situations, there is no statutory requirement to be current in your rent.

#### **At the trial**

There are several ways to show the Judge the landlord's retaliation against you:

1. Show what you did. Bring copies of letters and notices. Have witnesses testify or testify yourself.
2. Bring records. If you complained to the Housing Inspector, get those records.



3. Show that the landlord's claimed reason for evicting you is false.

***Note:*** *You may be able to use the retaliation defense in other situations too such as organizing and/or participating in a tenant organization or lawfully exercising any right you have under law. You should consult with an attorney to get more information.*

**TRIAL CHECKLIST-RETALIATION**  
**(Rent Is Current)**

The landlord has served this 30-day or 60-day notice on me to retaliate against me.

On \_\_\_\_\_, I complained to the landlord or a Housing Inspector about problems with the apartment and/or

On \_\_\_\_\_, a citation was issued by the Housing Inspector to correct a problem at my residence and/or

On \_\_\_\_\_, I filed a lawsuit against the landlord because of the problems at my apartment and/or

On \_\_\_\_\_, I talked to the landlord, and he/she said \_\_\_\_\_

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The landlord has served this 30-day or 60-day notice on me to retaliate against me because I complained about the habitability problems to him/her or the Housing Inspector. Under Civil Code section 1942.5(a), a landlord who serves a 30-day or 60-day notice within 180 days after a tenant complains to the Housing Inspector is presumed to be retaliating against the tenant. This is the case here. I am current in my rent. I request that the Court give judgment for defendant.

**PREPARING YOUR CASE FOR TRIAL**

**QUESTIONS AND ANSWERS  
ON  
HOW TO PROVE TENDER OF RENT**

You have made a claim that you tried to pay the rent to the landlord, but the landlord refused to take the money. This may amount to a defense to your eviction, but the rules of such a defense are strict. You must have tried to give the landlord the full amount of the rent within three days of getting the “Notice to Pay or Quit.” If you offer only part of the money you owe or if you offer all of the money you owe after the three days, you probably won’t win your case.

The law says that if you offer the full amount of rent owed before the end of the Three Day Notice period, the landlord has to take it. If the landlord refuses it, the landlord has done so wrongfully. You are asking a judge to force the landlord to take your money in court. Therefore, you must have all of your rent money when you go to court. Otherwise you will lose.

**HOW ARE THE DAYS COUNTED FOR THE THREE DAYS?**

You begin counting day one on the day *after* you got the notice. Weekends and holidays *do count*; however, if the third day is a holiday or a weekend, you have until midnight of the next business day to pay the rent. Find the day you were served with the three day notice in Column “A” below. You must offer the rent no later than the day listed next to it in Column “B” unless the third day is a holiday.

<b>Column A (DAY SERVED)</b>	<b>Column B (LAST DAY TO PAY)</b>
<b>Sunday</b>	<b>Wednesday</b>
<b>Monday</b>	<b>Thursday</b>
<b>Tuesday</b>	<b>Friday</b>
<b>Wednesday</b>	<b>Monday</b>
<b>Thursday</b>	<b>Monday</b>
<b>Friday</b>	<b>Monday</b>
<b>Saturday</b>	<b>Tuesday</b>

**HOW CAN I PROVE I TRIED TO PAY WITHIN THREE DAYS IF MY LANDLORD SAYS I DIDN’T?**

There are several ways to prove that you tried to pay within the three days. One way is to have someone with you as your witness when you try to pay and then take your witness to court with you. Even a child can be a witness so long as the child is old enough to know how to tell the truth.

Another good way to prove you tried to pay within the three days and it was refused is to send the money to your landlord within the three days by certified mail, return receipt requested. If you send the money this way, the post office will give you a receipt showing the date you mailed the letter and you will get a card from the post office showing that your landlord either accepted or refused the rent. Take all of the receipts and cards to court with you to show the judge.

Finally, if the landlord refuses to accept the rent, you can go to the bank and open an account, before the end of the three days, in your name as trustee for the landlord. You then write a letter to the landlord telling him that since he refused the rent, you have put the money in a bank account which you will give him whenever he asks for it. Along with the letter you should send the landlord a photocopy of the passbook. Make sure to keep a copy of the letter. When you go to court, take the passbook and the copy of the letter.

## **YOUR DAY IN COURT**

### **MAKE IT COUNT**

**\*\*YOU ARE REPRESENTING YOURSELF IN THIS EVICTION CASE. NO ATTORNEY OR REPRESENTATIVE WILL BE IN COURT TO HELP YOU.\*\***

Your landlord has filed an Unlawful Detainer case, which is also known as an eviction action, against you. You have filed your Answer and had someone serve a copy of your Answer by mail on your landlord or his/her attorney.

The purpose of this handout is to let you know what to expect in the next few weeks regarding your case, including:

- 1). WHEN AND WHERE TO BE IN COURT;
- 2). HOW TO PROVE YOUR CASE;
- 3). WHAT TO EXPECT AND DO IN COURT;
- 4). HOW TO SETTLE YOUR CASE IF THIS IS TO YOUR ADVANTAGE;  
and
- 5). WHAT HAPPENS AFTER TRIAL.

### **WHEN YOU GO TO COURT**

To keep from being evicted automatically (by “default”), there are only two things a tenant MUST do:

1. File an answer on time; and
2. Show up in court at the right place and time.

You have already filed your Answer; the only other step necessary to keep your landlord from winning automatically is to be in court at the right time.

### **HOW DO I KNOW WHEN MY CASE IS SET FOR TRIAL?**

- A. You should receive a **“MEMORANDUM TO SET CASE FOR TRIAL.”**

The “Memorandum to Set Case for Trial” will come in the mail after you file your Answer. A “Memorandum to Set Case for Trial” is a notice from the landlord asking the clerk to set the case for trial. Often attorneys and landlords don’t bother to serve this form on the tenant. You can check with the Court Clerk to see if this form has been filed. Usually it is filed right after the landlord or his attorney gets your Answer.

**You do not need to do anything when you get this form unless:**

1. In the next 3 weeks there are certain dates when you are unable to appear at trial for very good reasons.

or

2. You want a jury trial.

or

3. You want a court reporter.

If any of the above things apply, you need to file a “**Counter-Memorandum.**” You can get the form from the Court Clerk’s office and print in the word “COUNTER” before “MEMORANDUM.” It ***must*** be filed no later than 5 days after the Memorandum to Set was filed if you get a copy of it in person. If you get a copy of it by mail, then you **must** file the Counter-Memorandum no later than 10 days after the Memorandum to Set was filed.

**B. The next thing you will receive will be a “NOTICE OF TRIAL.”**

This is the notice from the Court clerk telling you when you must be in court. When you receive this form, look for the following information:

1. Day
2. Place
3. Time

If you do not get a “Notice of Trial” in 10 days, call the Court Clerk, give them your case number and ask when the trial is set.

**IF YOU RECEIVE ANY PAPERS OTHER THAN A “MEMORANDUM TO SET” OR A “NOTICE OF TRIAL,” BRING THEM BACK TO \_\_\_\_\_.** Sometimes landlords file “Summary Judgment Motions” or other complicated legal forms. You will need help to respond. Come back to \_\_\_\_\_ with your papers right away.

**HOW SOON WILL IT BE BEFORE MY CASE GOES TO TRIAL?**

There is a law in California which requires all eviction cases to go to trial within twenty days of the date the landlord requests a trial date. Most courts are following this law, so you should expect to be in court in less than one month.

## **CAN I GET AN EXTENSION OF MY COURT DATE?**

It is **very hard** to get an extension of an eviction case court date. To get one, you usually have to be extremely ill, hospitalized, etc. If this happens to you, first call the other side and tell them. Ask them for an extension. If they won't give it to you, call the court and inform the clerk of your problem. If you are in the hospital, be sure and leave the number of your hospital or doctor so the court can verify your whereabouts. Remember, extensions are hard to get so it is important that you be in court on the day of your trial. If you do not go to court, the landlord will usually win by default.

It is not sufficient cause for an extension that you don't have an attorney on the day of your trial. If you plan to get an attorney, have your attorney in court with you on your court date.

## **WHAT IF I MOVE BEFORE THE DATE OF THE TRIAL?**

If you move before the court date, show up anyway. If you do not show up, the landlord will get a default money judgment against you. If you show up and if you have moved before the court date, you are automatically given the right to have the trial postponed for at least one month under Civil Code section 1952.3. If the Judge will not postpone the trial, ask him or her to read that section of the Civil Code. Remember, this only works if you have fully moved out before the trial date.

## **WHAT IF I AM LATE TO MY COURT HEARING?**

If you think you are going to be late because of an emergency, be sure and call the court clerk. The number is in the upper left corner of the clerk's notice. If you are only to be an hour late because of car trouble, most judges will wait for you before starting. If you do not call, the case will go ahead without you and you will usually lose. When you arrive late, be sure to give your name to the sheriff, bailiff or court clerk as soon as you arrive. Remember that you may have to go through security so allow plenty of time for this.

## **HOW DO I PROVE MY CASE?**

To win and stay in your home you must prove at trial that:

1. What your landlord says is wrong; or
2. That the defenses listed on your Answer are true.

The things that the tenant needs to prove are often different in different cases. Therefore, you should look at the COMPLAINT and ANSWER in your own case and figure out:

From the Complaint, look to see why your landlord says he wants you out. Here are some examples of what landlords commonly say:

1. You have not paid the rent; or
2. You were given thirty (30) days' notice to leave and have not left.

From your own Answer and from the other materials that have been given you, you can look over the DEFENSES you have listed.

Examples of what you might want to prove are: "I paid the rent;" "My roof leaks and the furnace does not work;" "I complained to the Health Department;" or, "I never got a 3-Day Notice."

Now look again at the Answer and make sure you have not missed any of your defenses.

Now you should plan on how to prove your case. The court will consider different types of evidence to prove your case.

1. What you say;
2. What your witness or witnesses say;
3. What the Health Department Investigators, Housing Department Inspectors, or utility company employees say;
4. What a paper (receipt, rent agreement, letter) says;
5. What a photograph shows.

The Court will also consider what your landlord says. But you should not rely on your landlord to admit anything, even the amount of rent you paid. Be prepared to prove it yourself.

For each of the things you want to prove, decide the best evidence to prove it. The more ways you can prove it the better. For example, if you want to prove that the roof leaks, you might have the following ways to prove it:

1. You can say it leaks;
2. Your neighbor who helped you mop the floor and put buckets out can say that it leaks;
3. You can show that the Housing Department Inspector came to your apartment and saw that it leaked by asking him to testify or by bringing in a copy of a written inspection report;
4. You can take a picture of the place where the ceiling fell in;
5. You can show the copy of the note you wrote the landlord asking him to fix the roof;

6. Ask the Judge to go look for himself or herself.

**PEOPLE**—Ask all helpful witnesses if they will testify for you in court. If you have a witness who does not want to appear in court, you may obtain a subpoena to require him or her to attend the hearing. You can get the subpoena at the Court Clerk's office. However, if you subpoena a witness, you will probably be required to pay him/her witness fees before the trial. You should also consider that a hostile witness is often not helpful.

**PAPERS**—Rent receipts, notes to and from your landlord, letters, receipts for repairs and extermination, red tag from furnace, etc.

**OFFICIAL REPORTS**—Health Department, Housing Department or Utility Company reports, or Building Inspection Department reports. These must be certified to be admissible evidence so ask for certified copies.

**PHOTOGRAPHS**—Polaroid or snapshot pictures of important problems needing repairs.

Arrange for anyone who is going to be a witness to be in court with you on the day of the trial. Make a list of the questions you want to ask your witnesses. Place all of your documents and photos together in an envelope or package so that you will have them all with you on the day of the trial.

Finally, list the things that you want to tell the Judge keeping in mind each fact that you have put on your trial preparation worksheet. This list will help you remember even if you get nervous or interrupted. Include on your list specific examples you want to tell about which help prove your case.

Make sure you have followed all the steps on the checklist and listed your evidence and witnesses.

After you have made this list of what you want to tell the Judge, practice giving your testimony in front of a friend.

Now you are prepared to go to Court.

## **WHAT HAPPENS IN COURT?**

Be sure that you get to court on time. Plan on arriving EARLY with all your witnesses and evidence. IF YOU DO NOT SHOW UP IN COURT, A JUDGMENT WILL BE ENTERED AGAINST YOU. THE LANDLORD WILL AUTOMATICALLY WIN AND YOU WILL BE EVICTED.



There is usually a list of all cases to be heard outside the courtroom. Note the number of your case. Go in the Courtroom and tell the Clerk or Deputy your name and the name of your case.

The Judge will call off the list (one at a time) so listen closely for your number and case name. When your case is called:

1. Stand up and answer by saying your name and that you are ready.
2. If both sides are ready, the Judge may hear your case then or tell you to remain seated until your case is called. If the Judge sends you to another courtroom, go there immediately with all your witnesses and evidence and check in with the clerk.
3. When the Judge is ready to hear your case, walk to the front tables. Your witnesses can stay seated behind the railing.

**TRIAL CHECKLIST**

**AT TRIAL**

I want to prove these defenses:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

I will bring these witnesses who will help me:

1. \_\_\_\_\_ will say \_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_ will say \_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_ will say \_\_\_\_\_  
\_\_\_\_\_

I will bring these letters, inspection reports, receipts, photographs, or other papers:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

I will tell the Judge these things:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

### **WHAT HAPPENS IN COURT**

#### **HERE IS WHAT HAPPENS AT TRIAL:**

1. Judge calls your case.
2. Landlord (the Plaintiff) says he/she is ready.
3. You stand up – walk to the table in front and say:  

“I am \_\_\_\_\_, the defendant.”  
(give your name)

“I am ready.”
4. Landlord will put on his/her case.
5. You can ask questions about what the landlord or his/her witnesses said. (You must put everything into question form. For example: “Is it not true that...? Did you not say that ...? Did I not say that ...? ) You do not have to ask questions if you do not want to. Try to ask questions that have to be answered “yes” or “no” so that the landlord won’t given an explanation that helps his/her case.
6. You can put on your case.
7. The landlord or his/her attorney can ask you questions about what you said.

8. When all the evidence and testimony is finished, the Judge will allow landlord to make a closing argument and then you can make a closing argument.
9. The Judge makes a decision or takes the case “under submission.” “Under submission” means the Judge wants to think about the case. You will be notified of the decision by mail.
10. If your landlord or his/her lawyer do not show up at court, ask the Judge to dismiss the case.

# WHAT TO DO WITH PROPERTY LEFT BEHIND BY YOUR TENANT

## CONTACT THE TENANT

If the tenant has not contacted you regarding the personal property, try to contact the tenant to pick up the property. If you are unable to contact the tenant, you must follow these procedures.

## NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY

**Step 1:** Take an inventory of the abandoned property and write down everything you find. Do not open locked or fastened trunks, suitcases, or tied boxes; just describe the container. (**Tip: Take pictures of everything.**)

You may leave the property in the premises or have the property stored in a safe place. You may later insist the tenant pay for the cost of storage before returning the property. If you leave the property in the premises, you may charge the prorated daily rental value of the premises as storage.

**Step 2:** Estimate whether the value of all the property is more than \$300. Consider what you could get for it at a well-attended garage sale or swap meet or e-bay.

**Step 3:** Mail a Notice of Right to Reclaim Abandoned Property to the tenant. If you do not have the tenant's forwarding address, post a copy of the notice on the vacated premises and mail a copy to the last known address of the tenant (may be the vacated premises).

**Step 4:** Wait 18 days from the date of mailing the notice to give the tenant a chance to respond and claim the property.

## IF THE TENANT DEMANDS THE RETURN OF HIS PROPERTY

Within 5 days after receiving the tenant's demand, you must:

- a. Allow the tenant to pick up the property; **or**
- b. Notify the tenant by letter (addressed to the tenant at the return address specified in the tenant's demand letter) itemizing in detail the amount of moving and/or storage charges which you demand as a condition of returning the tenant's property. The tenant will then have 3 days to pay the charges and reclaim the property.

(NOTE: You **cannot** demand payment of back rent or your money judgment or other damages as a condition of returning the tenant's property.)

**IF THE TENANT DOES NOT DEMAND THE RETURN OF  
HIS PROPERTY WITHIN 18 DAYS AFTER NOTICE**

**PROPERTY WORTH LESS THAN \$300**

If the property is worth less than \$300, and the tenant or other owner of the property has not contacted you within 18 days of your mailing the Notice of Right to Reclaim Abandoned Property, you may do anything you wish with the property.

**PROPERTY WORTH MORE THAN \$300**

If the property is worth more than \$300, it must be sold by public auction. You must hire a licensed and bonded public auctioneer and follow the legal requirements for publication of notice and for disbursement of the auction proceeds.

**Publication:** Notice of the auction must be advertised in a local, general circulation, subscription newspaper once a week for two consecutive weeks with at least 5 days between each publication (not including the publication dates).

- a. The last publication must be at least 5 days before the auction date.
- b. The ad must describe the property to be sold with enough detail such that the owner would be able to identify the property.
- c. The ad must state the date, time and location of the auction.

**Auction Proceeds:**

- a. Proceeds from the auction (if any) go first to pay your reasonable costs of storage, advertising, and sale.
- b. The balance must be paid to the county within 30 days after the auction.
- c. You may use the balance to satisfy a money judgment against the tenant by having the sheriff levy the funds. This requires a Writ of Execution, instructions to the sheriff and the appropriate fees.
- d. If any remaining balance is not claimed by the tenant or other owner of the property within one year, the county retains the funds.

**MOTOR VEHICLES  
(The procedures above do not apply)**

If the tenant leaves a motor vehicle in front of or on your property, you may call the local police, giving the vehicle's make, model, and license number, and indicating where it is parked.

- If it is parked on the street, the police will place a notice on the windshield and have it towed away 72 hours later.
- If the vehicle is parked on your property, you can arrange to have it towed away within 24 hours after notifying the police, if the vehicle lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment.
  - Otherwise, the police may still arrange to tow the vehicle after an officer determines it is abandoned and tags it.

**INFORMATION FOR TENANTS IN FORECLOSED PROPERTY**  
**GENERAL INFORMATION**

All tenants who live in foreclosed residential property have additional protection from eviction under the Protecting Tenants at Foreclosure Act of 2009. This law allows tenants who live in foreclosed properties to stay in their homes until they are given at least ninety (90) days written notice to move from the new owner. The federal law applies to all tenants who live in residential properties in California that were sold at a foreclosure sale on May 20, 2009 or later.

If you have a lease entered prior to transfer of title at the foreclosure sale, you are allowed to stay in possession until the lease expires **unless** the buyer or subsequent purchaser intends to move in and make the property their primary residence. In this situation, you are still entitled to a ninety day written notice before being required to move. To be protected, you must have a **bona fide lease** not made to the owner whose property has been foreclosed or the spouse, parent or child of that person, made as an arms length transaction, and for fair market rent.

**NOTE: YOU WILL BE REQUIRED TO PAY RENT TO THE NEW OWNER OR YOU WILL BE SERVED WITH A THREE NOTICE TO PAY RENT OR QUIT!!**

**QUESTIONS AND ANSWERS**

**Can the person who buys the property force me to move right away?**

No.

The new owner has to serve you with a ninety day notice to leave.

If you have a lease, you will be able to stay until the end of the lease if you have a bona fide lease (see above).

**You will be required to pay rent to the new owner.**

**What if the new owner says I have to move right away and will not give me a ninety day notice?**

Send a letter to the new owner informing them about the new law. Consider sending the letter by registered or certified mail and keep a copy of your letter.

**What if I have a lease that will end after the ninety day notice period expires?**

If you have a bona fide lease that ends after the ninety day notice period expires, the new owner cannot evict you until the lease expires **unless** the

new owner intends to occupy the property as a principal residence. You will still have to pay rent to the new owner.

**What do I do if the new owner files an eviction case and has not given me a proper notice?**

You should state in your Answer as a defense that the new owner has not given the ninety day notice required by the Protecting Tenants At Foreclosure Act.

When you go to court, take the copy of the letter you sent to the new owner, the green receipt card if you sent the letter by certified or registered mail, a copy of the new law, and your lease if you have one.

**How do I find out if the property is in foreclosure or it has been sold at a trustee's sale?**

When your landlord stops paying the mortgage, the bank can start the foreclosure process by filing a Notice of Default. The owner then has three months to cure the default. Unless the owner works out something with the bank, the bank can have the foreclosure sale set a minimum of 20 days after recording and posting and mailing a Notice of Trustee's Sale.

The trustee must also post and mail a notice addressed to "Resident of property subject to foreclosure sale." This notice will advise you that the property is in foreclosure and is set to be sold at a foreclosure sale.

You should immediately open any mail addressed to "Resident" or "Unnamed Occupant." The notices will give you important information. You can also check at the Recorder's Office to find out if a Notice of Default or Notice of Trustee's sale has been recorded.

It is always a good idea to get legal advice on your rights!

**Notice of Right to Reclaim Abandoned Property  
(Civil Code Section 1984)**

To: \_\_\_\_\_  
(Name of former tenant)

\_\_\_\_\_  
(Address of former tenant)

When you vacated the premises at \_\_\_\_\_  
\_\_\_\_\_  
(Address of premises, including room or apartment number, if any)

the following personal property remained: \_\_\_\_\_  
\_\_\_\_\_  
(Insert detailed description of the personal property)

You may claim this property at \_\_\_\_\_  
\_\_\_\_\_  
(Address where property may be claimed)

Unless you pay the reasonable cost of storage for all the above-described property, and take possession of the property which you claim, not later than \_\_\_\_\_ (insert date not less than 15 days after notice is personally delivered or, if mailed, not less than 18 days after notice is deposited in the mail) this property may be disposed of pursuant to Civil Code Section 1988.

(check one)

\_\_\_\_\_ (If the property is worth more than \$300) If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the cost of storage, advertising, and sale is deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within one year after the county receives the money.

\_\_\_\_\_ Because this property is believed to be worth less than \$300, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated above."

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of landlord/manager)

\_\_\_\_\_  
(Type or print name of landlord/manager)

\_\_\_\_\_  
(Telephone number)

\_\_\_\_\_  
(Address)