

12th edition

# **The California Landlord's Law Book: Evictions**

**by Attorney David Brown**

**edited by Janet Portman**



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TWELFTH EDITION	FEBRUARY 2007
Editor	JANET PORTMAN
Book Design	TERRI HEARSH
Production	MARGARET LIVINGSTON
CD-ROM Preparation	ELLEN BITTER
Proofreading	ROBERT WELLS
Index	MICHAEL FERREIRA
Cover Photography	TONYA PERME (www.tonyaperme.com)
Printing	DELTA PRINTING SOLUTIONS, INC.

Brown, David Wayne, 1949-

The California landlord's law book. Evictions / by David Brown ; edited by Janet Portman.-- 12th ed.

p. cm.

ISBN-13: 978-1-4133-0570-8

ISBN-10: 1-4133-0570-9

1. Landlord and tenant--California--Popular works. 2. Eviction--California--Popular works. I. Portman, Janet. II. Title. III. Title: Landlord's law book. IV. Title: Evictions.

KFC145.Z9B762 2007

346.79404'34--dc22

2006047126

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## Acknowledgments

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This book could not have been published without the generous assistance of many people. A special thank you to Mary Randolph, Steve Elias, Jake Warner, Marcia Stewart, Patricia Gima, and Janet Portman, who all tirelessly read the entire manuscript several times and made numerous helpful suggestions, nearly all of which were incorporated. If you find this book easy to follow and enjoyable to read (well, not like a novel), Mary, Steve, Jake, Marcia, Patricia, and Janet deserve most of the credit.

Thanks also to Robin Leonard, Amy Ihara, John O'Donnell, Barbara Hodovan, Kate Thill, Carol Pladsen, Stephanie Harolde, Julie Christianson, David Cole, Ann Heron, Jack Devaney, Susan Quinn, Alison Towle, and especially Toni Ihara and Terri Hearsh, who were responsible for the layout of this book. Ira Serkes, past president of the Rental Housing Association of Contra Costa County, read the manuscript and made helpful suggestions. Martin Dean, of Martin Dean Essential Publishers, Inc., generously gave us permission to reprint one of their forms.

## About the Author

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David Brown practices law in the Monterey, California, area, where he has represented both landlords and tenants in hundreds of court cases—most of which he felt could have been avoided if both sides were more fully informed about landlord/tenant law. Brown is a graduate of Stanford University (chemistry) and the University of Santa Clara Law School. He is the author of *Fight Your Ticket and Win in California* and *Beat Your Ticket* (national), and the coauthor of *The California Landlord's Law Book: Rights & Responsibilities* and *The Guardianship Book*, all published by Nolo.



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Sometimes even the most sincere and professional attempts at conscientious landlording fail, and you have to consider evicting a tenant. This is a do-it-yourself eviction manual for California landlords. It shows you, step by step, how to file and conduct an uncontested eviction lawsuit against a residential tenant. It does not cover how to evict a hotel guest, a tenant in a mobile home park, or a commercial tenant. Neither does it show a new owner, who has just purchased property at a foreclosure sale, how to evict a former owner (or his tenant).

## The Landlord's Role in Evictions

Strictly speaking, the word “evict” refers to the process of a sheriff or marshal ordering a tenant to get out or be forcibly removed. It is illegal for you to try to physically evict a tenant yourself. The sheriff or marshal will only evict a tenant pursuant to a court order known as an “unlawful detainer judgment.” To get such a judgment, you must bring an eviction lawsuit, called an “unlawful detainer action,” against the tenant.

The linchpin of an unlawful detainer suit is proper termination of the tenancy; you can't get a judgment without it. This usually means giving your tenant adequate written notice, in a specified way. The law sets out very detailed requirements for landlords who want to end a tenancy. If you don't meet them exactly, you will lose your suit even if your tenant has bounced checks, including your rent check, from here to Mandalay.

This legal strictness is not accidental; it reflects the law's bias in favor of tenants. The law used to be heavily weighted on the landowner's side, but attitudes have changed, and today the law puts more value on a tenant's right to shelter than a landlord's right to property. As one court put it, “Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home.” (*Maldonado v. Superior Court* (1984) 162 Cal. App. 3d 1259, 1268-69.)

Because an eviction judgment means the tenant won't have a roof over his head (and his children's

heads), judges are very demanding of the landlord. In addition, many California cities go beyond state law, which allows the termination of periodic tenancies at the will of the landlord, and require the landlord to show a “just cause” for eviction. In these cities, nonpayment of rent is still a straightforward ground for eviction, but there are few others.

Why do we emphasize the negatives of evicting a tenant? Because we want you to understand at the outset that even if you properly bring and conduct an unlawful detainer action, you are not assured of winning and having the tenant evicted if the tenant decides to file a defense. In other words, despite the merits of your position, you may face a judge who will hold you to every technicality and bend over backwards to sustain the tenant's position. A tenant can raise many substantive, as well as procedural, objections to an unlawful detainer suit. Essentially, any breach by you of any duty imposed on landlords by state or local law can be used by your tenant as a defense to your action. Simply put, unless you thoroughly know your legal rights and duties as a landlord before you go to court, and unless you dot every “i” and cross every “t,” you may end up on the losing side. Our advice: Especially if your action is contested, be meticulous in your preparation.

Before you proceed with an unlawful detainer lawsuit, consider that even paying the tenant a few hundred dollars to leave right away may be cheaper in the long run. For example, paying a tenant \$500 to leave right away (with payment made only as the tenant leaves and hands you the keys) may be cheaper than spending \$100 to file suit and going without rent for three to eight weeks while the tenant contests the lawsuit and stays. The alternative of a several-month-long eviction lawsuit—during which you can't accept rent that you may be unable to collect even after winning a judgment—may, in the long run, be more expensive and frustrating than paying the tenant to leave and starting over with a better tenant quickly.



**Note of Sanity.** Between 80% and 90% of all unlawful detainer actions are won by landlords because the tenant fails to show up. So the odds favor relatively smooth sailing in your unlawful detainer action.

## Proceed With Caution When Evicting a Tenant

The moment relations between you and one of your tenants begin to sour, you will be wise to remember a cardinal truth. Any activity by you that might be construed by your tenant as illegal, threatening, humiliating, abusive, or invasive of his privacy can potentially give rise to a lawsuit against you for big bucks. So, although the unlawful detainer procedure can be tedious, it's important to understand that it is the only game in town.

Shortcuts such as threats, intimidation, utility shutoffs, or attempts to physically remove a tenant are illegal and dangerous. If you resort to them, you may well find yourself on the wrong end of a lawsuit for such personal injuries as trespass, assault, battery, slander and libel, intentional infliction of emotional distress, and wrongful eviction. A San Francisco landlord was ordered to pay 23 tenants \$1.48 million in 1988, after a jury found he had cut off tenants' water, invaded their privacy, and threatened to physically throw them out. (The verdict was reduced on appeal, to half a million dollars.) (*Balmoral Hotel Tenants Association v. Lee* (1990) 226 Cal. App. 3d 686, 276 Cal. Rptr. 640.)

To avoid such liability, we recommend that you avoid all unnecessary one-on-one personal contact with the tenant during the eviction process unless it occurs in a structured setting (for example, during mediation, at a neighborhood dispute resolution center, or in the presence of a neutral third party). Also keep your written communications to the point and as neutral as you can, even if you are boiling inside. Remember, any manifestations of anger on your part can come back to legally haunt you somewhere down the line. Finally, treat the tenant like she has a right to remain on the premises, even though it is your position that she doesn't. Until the day the sheriff or marshal shows up with a writ of possession, the tenant's home is legally her castle, and you may come to regret any actions on your part that don't recognize that fact.

## When Not to Use This Book

Most of you fit within the most common eviction situation: You (or the owner, if you are a manager) own residential rental property which you operate as a business. You need to evict a tenant who has not paid the rent, has violated another important rental term or condition, or has held over past the expiration of his or her lease or rental agreement. This is the book for you, to use on your own or in conjunction with an attorney.

There are some situations, however, that this book doesn't address. Do not use this book, or its forms, if any of the following scenarios describe you.

**You have bought the property at a foreclosure sale and need to evict the former owner, who has not moved out.** If you now want to get rid of the former owner-occupant, you must use a special unlawful detainer complaint, unlike the forms contained in this book. You'll need to see a lawyer.

**You have bought the property at a foreclosure sale and need to evict the tenant of the former owner.** If the occupant is a tenant of the former owner, different procedures apply depending on whether the tenant's lease predated the mortgage or deed of trust foreclosed upon, and whether you accepted rent from the tenant after foreclosure. Here are the rules:

- If the tenant's lease or rental agreement began after the deed of trust was recorded (which will be true in most cases), the foreclosure sale has the effect of wiping out the lease or rental agreement. If you have not accepted rent from the former owner's tenant, there is a way to get the tenant out quickly—but you won't be able to use the Complaint forms in this book. You'll need to see a lawyer.
- If the tenant's lease began before the deed of trust was recorded, or if you have accepted rent from a tenant whose lease or rental agreement predates the deed of trust, you must honor his lease or rental agreement just as the former owner did. In short, you are now the tenant's landlord, and until the lease runs out (or you terminate a month-to-month tenancy with the proper amount of notice), or until the tenant otherwise violates the rental conditions, you are stuck with this tenant. If any of these events come to pass, however, you may use this book.

**You have purchased the property and want to evict the former owner's tenant.** When you purchase property at a normal sale, you “take” it subject to existing leases or rental agreements. This means that no matter how much you would like to move in yourself or install different tenants, you can't do so until the leases run out, you terminate a month-to-month with the proper amount of notice, or the tenant violates an important rental term or condition. When any of these conditions are met, however, you may go ahead and use this book and its forms.

**You own commercial property and want to evict a tenant for nonpayment of rent or other lease violations.**

Commercial landlords should not use this book. Many commercial leases require tenants to pay for common-area maintenance, prorated property taxes, and utility charges, in addition to a set monthly sum. Because the exact rent amount is often not clear, a special termination notice (not supplied in this book) must be used. Also, many commercial leases provide for special types of notice periods and ways to serve notices, which are different from the ones specified in this book. Finally, since commercial leases often run for five or ten years and can be quite valuable to a tenant, a commercial tenant is much more likely than a residential tenant to contest an eviction—and judges are less likely to order an eviction for minor lease violations. In short, with all these possible complications, we suggest seeing an attorney to handle an eviction of a commercial tenant.

## A Reason for Which You Must Evict: Drug Dealing

In cases of drug dealing, it's not a question of whether or not it's permissible to evict a tenant—it's imperative to do so. In fact, a landlord who fails to evict a tenant who deals illegal drugs on the property can face lawsuits from other tenants, neighbors, and local authorities. Many landlords have been held liable for tens of thousands of dollars in damages for failing to evict a drug-dealing tenant. A landlord can also face loss of the property.

When it's a month-to-month tenancy, terminate the tenancy with a 30-day notice (or 60-day notice if tenant has stayed a year or more—see Chapter 3 as soon as you suspect illegal drug activity by the tenant or any

members of the tenant's family. If the tenant has a fixed-term lease, you will have to follow the procedures in Chapter 4. Evictions for drug dealing may be a little more difficult in rent control cities with “just cause eviction” provisions in their rent control ordinances; even so, a landlord faced with a drug-dealing tenant should do everything he or she can to evict, and should begin gathering evidence against the drug dealer—including getting tenants and neighbors to keep records of heavy traffic in and out of the suspected tenant's home at odd hours.

### Prosecutors May Evict for You—At a Price

The legislature has established a program for certain courts within Alameda, Los Angeles, and San Diego counties that authorizes the city attorney or district attorney to file an unlawful detainer action against tenants who are using rental property to sell, use, store, or make illegal drugs. (H&S § 11571.1.) The program applies to cases brought in certain cities in those counties, including the City of Los Angeles, Long Beach, San Diego, and Oakland. It will expire January 1, 2010, unless the legislature extends it.

Owners will be given 30 days' notice of the intended eviction lawsuit, and will be given 30 days to proceed with the eviction on their own. If they decline, they will be expected to furnish relevant information about the tenants and their activities and must assign their right to evict to the city. Owners may be asked to cover up to \$600 worth of the city's litigation costs. If the owners don't cooperate or respond within the 30 days, the city can join the owners as defendants in the eviction lawsuit. And if the city has to go this route and wins, the owner will be ordered to pay the city for the entire cost of bringing the lawsuit. In Los Angeles, the District Attorney's office issues about 500 such eviction notices per year; 50 to 80 go to trial, and the city wins 98% of them. (“Law Would Give Oakland the Muscle to Oust Tenants,” *San Francisco Daily Journal*, April 6, 2004.)

Heard enough? The message is clear: Take care of drug problems yourself, quickly. If you don't want to handle the eviction on your own, hire counsel. Don't end up footing the bill for the services of well-paid city attorneys.



## Evictions in Certain Cities

Local ordinances in many California cities address evictions—specifying under what circumstances you may proceed, and how to proceed. Most of these cities also have rent control ordinances, but not all, as you’ll see below.

### Cities With Rent Control

If you think all local rent control laws do is control rents, you have a surprise coming. They also affect evictions in two important ways: First, many (but not all) rent control ordinances and regulations impose important restrictions or additional procedural requirements on evictions. For example, the ordinances of some cities require a landlord to have a “just cause” (good reason) to evict a tenant, sometimes even for rental units that are exempt from rent control. Local ordinances also commonly require tenancy termination notices and complaints to contain statements not required by state law.

Second, any violation of any provision of a rent control law may provide a tenant with a defense to your eviction lawsuit. Even failure to register your rental units with the local rent board, if that is required under the ordinance, may provide a tenant with a successful defense against an eviction suit. Appendix 1 in this book lists the requirements each rent control city imposes on eviction lawsuits—such as any applicable registration requirements or extra information required in three-day or other termination notices or in the eviction complaint itself.

No two cities’ rent control ordinances are alike. Within the space of one book, we can only write instructions and forms for use by the majority of California landlords—those who do not have rent control. We cannot include 15 additional sets that are tailor-made for use in the 15 cities that have rent control and impose additional requirements when it comes to filling out forms. **But your rent control ordinance may affect almost every step in your eviction proceeding.** If you do not conform your notices and court filings to your ordinance’s requirements, it’s very likely that your case will be tossed out or lost, perhaps after you’ve spent considerable time and effort. We cannot say this strongly enough: **Read your rent control ordinance before you begin an unlawful detainer proceeding and before you**

**use any of the forms in this book.** Begin by reading the overview in Appendix 1, which tells you what to look for and where to learn more (often, you can read the ordinance online).

### Cities With Rent Control

Some form of rent regulation now exists in fifteen California cities:

Berkeley	Oakland
Beverly Hills	Palm Springs
Campbell (mediation only)*	San Francisco
East Palo Alto	San Jose*
Fremont (mediation only)*	Santa Monica
Hayward	Thousand Oaks
Los Angeles	West Hollywood
Los Gatos*	

\*These rent control cities do not have just cause eviction provisions.

### San Diego and Glendale

Two cities without rent control—San Diego and Glendale—also restrict evictions, though San Diego’s ordinance applies only to tenancies lasting two years or more. These cities’ rules do not affect the procedure for evicting with a three-day notice based on nonpayment of rent or other breach, or commission of waste or nuisance. They do affect evictions based on 30-day or 60-day terminations of month-to-month tenancies. See “Checklist for 30- or 60-Day Notice Eviction” in Chapter 3.

### Evicting Roommates

This book was written with the small property owner in mind, such as an owner of a modest apartment complex or a single-family rental.

However, some of our readers have used this book to evict a roommate. If you are thinking about evicting a roommate, we suggest that you read *The Landlord’s Law Book: Rights & Responsibilities*, where we discuss the legal relationship between roommates.

If you want to use this book to evict a roommate, you must be the original tenant (or the one who has signed a lease or rental agreement with the landlord), and the roommate you want to evict must be your landlord's "subtenant." A "subtenant" is usually someone who is renting part of your place from you and paying rent to you instead of your landlord. In this relationship, you are the "landlord" and your roommate is your "tenant."

You can't evict a roommate if you and your roommate are "cotenants." You are cotenants if you and your roommate both signed the lease or rental agreement.

**EXAMPLE:** Marlena Mastertenant rents a two-bedroom house from Oscar Owner for \$900 a month. Marlena rents one of the bedrooms (plus half the common areas such as kitchen, bathroom, and hallways) to Susie Subtenant for \$400 a month. Marlena is the tenant and Susie is the subtenant. Marlena can use the procedures in this book to evict Susie if Susie doesn't pay her rent. In the unlawful detainer complaint (see "Preparing the Complaint," Item 3, in Chapter 6), Marlena should list herself as "lessee/sublessor."

## Evicting a Lodger

A lodger, or roomer, is someone who rents a room in a house that you own and live in. The rules for evicting a lodger are covered by California Civil Code § 1946.5 and Penal Code §§ 602.3 and 837, and apply only if you rent to *one* lodger. (If you have two or more lodgers, you must use the unlawful detainer procedures described in this book.) In addition, you must have overall control of the dwelling unit and have retained a right of access to areas occupied by the lodger.

If your lodger is a month-to-month tenant and you want to terminate the tenancy, you can serve the lodger with a 30-day notice, as explained in Chapter 3. You may also use a shortcut (not available to landlords serving nonlodger tenants) and send the notice by certified or registered mail, restricted delivery, with a return receipt requested.

A lodger who doesn't leave at the end of the notice period is guilty of an infraction. Technically, this entitles you to do a citizen's arrest, which means that you can eject the lodger using reasonable, but not deadly, force. However, we strongly advise against this tactic, and instead suggest calling local law enforcement to handle the situation. Have a copy of your dated termination notice available. Be aware that many local police do not know the procedures for evicting lodgers or may not want to get involved, fearing potential liability for

improperly evicting a tenant. The police may insist that you go through the normal unlawful detainer lawsuit process—which will result in a court order authorizing the police or sheriff to evict the lodger. If the lodger has stayed for a year or more and the police won't evict on your 30-day notice, you will have to start all over with a 60-day notice according to a different law, Civ. § 1946.1. Check with your chief of police to find out how this issue is handled.

If you need to evict your lodger "for cause"—that is, for failing to pay the rent or violation of the rental agreement—you can serve him with a three-day notice, *but if he doesn't leave you will have to go through an unlawful detainer lawsuit as explained in this book.* You cannot hand your copy of the three-day notice to the local police and ask them to remove the lodger. For this reason, you may want to use the less complicated route of the 30-day notice, in hopes that, if the lodger refuses to budge, local law enforcement will honor your termination notice.

Finally, if your lodger has a lease, you cannot evict unless he has failed to pay the rent, violated a term of the lease, or engaged in illegal activity. In these situations you will need to use a 30-day or 60-day notice. If the lodger fails to vacate, you must file an unlawful detainer lawsuit in order to get him out.

**EXAMPLE:** Terry Tenant and Tillie Tenant (brother and sister) jointly rent a two-bedroom apartment from Lenny Landlord. They moved in at the same time and both of them signed the lease. They are both Lenny's tenants. Since neither Terry nor Tillie are each other's subtenant, they cannot use this book.



The legal relationship between roommates is often unclear. For example, if one tenant moved in first, is the second occupant a subtenant because she negotiated with and rented from the first tenant, or a cotenant because she claims to have a separate verbal understanding with the owner regarding rent? If in doubt, see a lawyer before using this book to evict a roommate you claim is your subtenant.

## Evicting a Resident Manager

If you fire a resident manager, or if he quits, you will often want him to move out of your property, particularly if he occupies a special manager's unit or if the firing or quitting has generated (or resulted from) ill will. Eviction lawsuits against former managers can be extremely complicated. This is especially true if the management agreement requires good cause for termination of employment or a certain period of notice. Such lawsuits can also be complicated where a single combined management/rental agreement is used or if local rent control laws impose special requirements. While all rent control cities do allow eviction of fired managers, some cities impose restrictions on it.

This section outlines some of the basic issues involved in evicting a resident manager. We do not, and cannot, provide you complete advice on how to evict a resident manager. In many cases, you will need an experienced attorney who specializes in landlord-tenant law to evict a former manager, particularly if the ex-manager questions whether the firing was legally effective or proper.

## Separate Management and Rental Agreements

To evict a tenant-manager with whom you signed separate management and rental agreements (which allows you to terminate the employment at any time),

you will have to give a normal 30-day written termination notice, or a 60-day notice if the tenant-manager stayed for a year or more, subject in either case to any just cause eviction requirements in rent-control cities. (See Chapter 3.) If the tenant has a separate fixed-term lease, you cannot terminate the tenancy until the lease expires.

## Single Management/Rental Agreement

What happens to the tenancy when you fire a manager (or he quits) depends on the kind of agreement you and the manager had.

### If the Manager Occupied a Special Manager's Unit

If your manager occupies a specially constructed manager's unit (such as one with a reception area or built-in desk) which must be used by the manager, or if she receives an apartment rent-free as part or all of her compensation, your ability to evict the ex-manager depends on:

- the terms of the management/rental agreement, and
- local rent control provisions.

If the agreement says nothing about the tenancy continuing if the manager quits or is fired, termination of the employment also terminates the tenancy. You can insist that the ex-manager leave right away, without serving any three-day or other termination notice, and can file an eviction lawsuit the next day if the ex-manager refuses to leave. (See C.C.P. § 1161 (1) and *Lombard v. Santa Monica YMCA* (1985) 160 Cal. App. 3d 529.) (See the checklist in Chapter 5.)

The just cause eviction provisions of any applicable rent control law, however, may still require a separate notice or otherwise restrict your ability to evict a fired manager.

### If the Manager Didn't Occupy a Manager's Unit

If the manager was simply compensated by a rent reduction, and there is no separate employment agreement, there may be confusion as to whether the rent can be "increased" after the manager is fired.

If an ex-manager refuses to pay the full rent, you will have to serve a Three-Day Notice to Pay Rent or Quit, demanding the unpaid rent. If she still won't pay, you'll have to follow up with an eviction lawsuit. (See Chapter 2.)

## Attorneys and Eviction Services

While you can do most evictions yourself, there are a few circumstances when you may want to consult an attorney who specializes in landlord-tenant law:

- The property you own is too far from where you live. Since you must file an eviction lawsuit where the property is located, the time and travel involved in representing yourself may be great.
- Your tenant is already represented by a lawyer, even before you proceed with an eviction.
- Your property is subject to rent control and local ordinances governing evictions.
- The tenant you are evicting is an ex-manager whom you have fired. (See above.)
- Your tenant contests the eviction in court. (See Chapter 8 for more details on hiring an attorney in contested cases.)
- Your tenant files for bankruptcy. (See Chapter 10.)

If you simply want someone to handle the paperwork and eviction details, you can use an “eviction service.” (Check the Yellow Pages under this heading.) Because eviction services cannot represent you in court, however, they are not helpful where the tenant contests the eviction in court.

Eviction services must be registered as “unlawful detainer assistants” with the county in which they operate, and must also be bonded or insured. (Bus. & Prof. Code §§ 6400-6415.) In addition, all court papers filed by an unlawful detainer assistant must indicate that person’s name, address and country registration number.

## How to Use This Book

This book is a companion volume to *The California Landlord’s Law Book: Rights & Responsibilities*, which discusses the legal rules of renting residential real property, with an eye toward avoiding legal problems and fostering good tenant relations. Although you can use this book as a self-contained do-it-yourself eviction manual, we strongly recommend that you use it along with *The California Landlord’s Law Book: Rights & Responsibilities*. It’s not just that we want to sell more books—*The California Landlord’s Law Book: Rights & Responsibilities* provides crucial information on the substance of landlord-tenant law that you

almost certainly will need to know to win a contested unlawful detainer lawsuit. For example it discusses leases, cotenants, subtenants, roommates, deposits, rent increases, rent control laws, privacy, discrimination, your duty to provide safe housing, and many more crucially important areas of landlord-tenant law. Even more important, *The California Landlord’s Law Book: Rights & Responsibilities* provides a good overview of your duties as a landlord so that you can minimize the need to evict tenants as much as possible, or at least know in advance whether you’re vulnerable to any of the commonly used tenant defenses.

Some material is necessarily repeated here and discussed in the eviction context. For example, information on three-day notices is important for both rent collection and for eviction. For the most part, however, this volume makes extensive references to *The California Landlord’s Law Book: Rights & Responsibilities* for detailed discussions of substantive law instead of repeating them.

Now let’s take a minute to get an overview of how this volume works. Chapters 2 through 5 explain the legal grounds for eviction. This entire lists looks like this:

- The tenant has failed to leave or pay the rent due within three days of having received from you a written Three-Day Notice to Pay Rent or Quit (Chapter 2).
- A month-to-month tenant has failed to leave within the time allowed after having received from you a written notice giving 30 days, or 60 days if the tenant rented for a year or more, or 90 days (certain government-subsidized tenancies.) (Chapter 3.)
- The tenant has failed to leave or comply with a provision of her lease or rental agreement within three days after having received your written three-day notice to correct the violation or quit (Chapter 4).
- The tenant has sublet the property contrary to the lease or rental agreement, has caused or allowed a nuisance or serious damage to the property, or has used the property for an illegal purpose, and has failed to leave within three days of having received from you an unconditional three-day notice to vacate (Chapter 4).
- A tenant whose fixed-term lease has expired and has not been renewed has failed to leave (Chapter 5).

- A month-to-month tenant has failed to leave within the stated time after having given you a written 30-day or 60-day notice terminating the tenancy (Chapter 5).

After the tenancy is terminated (in almost all cases, by a three-day or other notice), most of the procedures in unlawful detainer lawsuits are the same no matter which reason your suit is based on. Thus, after you read either Chapter 2, 3, 4, or 5, depending on the way you're terminating the tenancy, go next to the chapters that explain the court procedures. These begin with Chapter 6 on filing a complaint to begin your unlawful detainer lawsuit.

If your tenant doesn't contest the lawsuit within five days after being served with a copy of your complaint, you will go next to Chapter 7 on getting an eviction judgment by default.

If the tenant does contest your unlawful detainer suit, you will proceed directly to Chapter 8, which tells you how to handle contested actions and when the services of a lawyer are advisable. Chapter 10 discusses your options when a tenant files for bankruptcy.

Chapter 9, on collecting your money judgment, will be your last stop after you win the lawsuit.

The whole eviction process typically takes from one to two months.

If you live in a city with a rent control ordinance, you will be referred to Appendix 1 from time to time for more detailed information on your locality's ordinance.

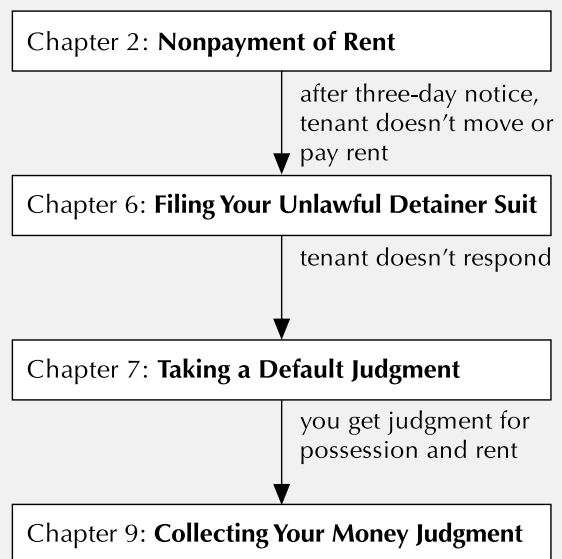
Here are two examples of common pathways through this book:

**EXAMPLE:** A tenant in your Los Angeles apartment building, Roy, doesn't pay the rent when it's due on the first of the month. A few days pass, and you decide he's probably never going to pay it. You turn to Chapter 2 on nonpayment of rent. Following the instructions, you serve Roy with a three-day notice to pay rent or quit (after checking Appendix 1 in this book and a copy of the current Los Angeles rent control ordinance to see if there are any special requirements you should know about).

Roy neither pays the rent nor moves in three days. You then turn to Chapter 6, which tells you how to begin an unlawful detainer suit by filing a complaint with the court and serving a copy of the complaint and a summons on the tenant. Roy does not respond to your complaint in five days,

and Chapter 6 steers you to Chapter 7 on how to get a default judgment. You are entitled to a default judgment when the other side does not do the things necessary to contest a case. After you successfully use Chapter 7 to take default judgments both for possession of the premises and the money Roy owes you, your final step is to turn to Chapter 9 for advice on how to collect the money.

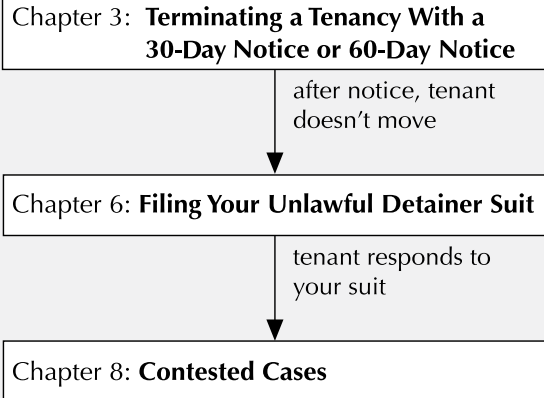
### Eviction for Nonpayment of Rent



**EXAMPLE:** You decide that you want to move a new tenant into the house you rent out in Sacramento. The current tenant, Maria, occupies the house under a month-to-month rental agreement. She pays her rent on time, and you've never had any serious problems with her, but you would rather have your friend Jim live there. You turn to Chapter 3 and follow the instructions to prepare and serve a notice terminating Maria's tenancy—a 60-day notice because she's lived there more than a year. Maria doesn't leave after her 60 days are up, so you go to Chapter 6 for instructions on how to file your unlawful detainer suit. After you serve her with the summons and complaint, Maria files a written response with the court. You then go to Chapter 8 to read about contested lawsuits.



## Eviction With 30-Day or 60-Day Notice



## Valuable Resources



You should have ready access to current editions of the *California Civil Code* and the *California Code of Civil Procedure*. Although we often refer to and explain the relevant code sections, there are times when you will want to look at the entire statute. These resources are available at most public and all law libraries. You can also order the paperback versions from Nolo. To read California statutes online, see the website maintained by the Legislative Counsel at [www.leginfo.ca.gov](http://www.leginfo.ca.gov). Chapter 8 of *The California Landlord's Law Book: Rights & Responsibilities* shows you how to find and use statutes and other legal resources if you want to do more research on a particular subject.

To go further, we recommend *Legal Research: How to Find & Understand the Law*, by Stephen Elias and Susan Levinkind (Nolo), which gives easy-to-use, step-by-step instructions on how to find legal information. (See order information at the back of this book.)

## Abbreviations Used in This Book

We use these standard abbreviations throughout this book for important statutes and court cases covering evictions.

### California Codes

Bus. & Prof.	Business & Professions
Civ. Code	Civil
C.C.P.	Civil Procedure
Evid.	Evidence
Gov't.	Government
H. & S.	Health and Safety

### Federal Laws

C.F.R.	Code of Federal Regulations
U.S.C.	United States Code

### Cases

Cal. App.	California Court of Appeal
Cal.	California Supreme Court
F. Supp.	Federal District Court
F.2d or F.3d	Federal Court of Appeals
U.S.	United States Supreme Court

## Icons Used in This Book



**Caution.** This icon alerts you to potential problems.



**See an Expert.** This icon lets you know when you need the advice of an attorney or other expert.



**Fast Track.** This icon lets you know when you can skip information that may not be relevant to your situation.



**Recommended Reading.** This icon refers you to other books or resources.



**Rent Control.** This icon indicates special considerations for rent control cities.



**Tip.** This icon alerts you to a practical tip or good idea.



**Tear-out Forms and CD-ROM.** This icon tells you that the form referred to in the text can be found as a tear-out in Appendix 3 and on the CD-ROM that is included with this book. Instructions for opening and using the CD are in Appendix 2.

## Eviction for Nonpayment of Rent

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**A**pproximately nine out of ten unlawful detainer lawsuits are brought because of the tenant's failure to pay rent when due. Although you don't want to sue your tenants every time they're 20 minutes late with the rent, obviously it's unwise to let a tenant get very far behind. You have to use your own best judgment to decide how long to wait.

Once you've decided that your tenants either can't or won't pay the rent within a reasonable time (or move out), you will want to evict them as fast as possible. As we stressed in the previous chapter, the only legal way to do this is with an "unlawful detainer" lawsuit. This chapter shows you how to do this step by step.

## Overview of the Process

Before you can file an unlawful detainer lawsuit against a tenant, the law requires that you terminate the tenancy. To properly terminate a tenancy for nonpayment of rent, you must give the tenant three days' written notice using a form called a Three-Day Notice to Pay Rent or Quit. This is normally referred to as a three-day notice.

If within three days after you properly serve the tenant with this notice (you don't count the first day) she offers you the entire rent demanded, the termination is ineffective and the tenant can legally stay. If, however, the tenant neither pays nor moves by the end of the third day (assuming the third day doesn't fall on a Saturday, Sunday, or holiday), you can begin your lawsuit.

You do not have to accept payment offered after the end of the third day (unless it falls on a Saturday, Sunday, or holiday, in which case the tenant has until the end of the next business day to pay up). If you do accept the rent, you no longer have the right to evict the tenant based on the three-day notice.

**EXAMPLE:** Tillie's lease requires her to pay \$600 rent to her landlord, Lenny, on the first day of each month in advance. Tillie fails to pay November's rent on November 1. By November 9, it's evident to Lenny that Tillie has no intention of paying the rent, so he serves her with a Three-Day Notice to Pay Rent or Quit following the instructions set out below. The day the notice is given doesn't count, and Tillie has three days, starting on the 10th, to

pay. Tillie doesn't pay the rent on the 10th, 11th, or 12th. However, since the 12th is a Saturday, Tillie is not legally required to pay until the close of the next business day, which is November 15 (because November 13 is a Sunday and the 14th is a holiday—Veteran's Day). In other words, Lenny cannot bring his lawsuit until November 16.

Lenny will be very lucky if he can get Tillie out by the end of the month, partly because he waited so long before giving her the three-day notice. If Lenny had given Tillie the notice on November 4, the third day after that would have been November 7. Lenny could have filed his suit on the 8th and gotten Tillie out a week sooner.

## Checklist for Uncontested Three-Day Notice Eviction

Here are the steps involved in evicting on the grounds covered in this chapter, if the tenant defaults. We cover some of the subjects (for example, filing a complaint and default judgments) in later chapters. As you work your way through the book you may want to return to this chart to see where you are in the process.

## Preparing the Three-Day Notice to Pay Rent or Quit

Pay very close attention to the formalities of preparing and giving the notice. Any mistake in the notice, however slight, may give your tenant (or her attorney) an excuse to contest the eviction lawsuit. At worst, a mistake in the three-day notice may render your unlawful detainer lawsuit "fatally defective"—which means you not only lose, but very likely will have to pay the tenant's court costs and attorney's fees if she is represented by a lawyer, and will have to start all over again with a correct three-day notice.

## Requirements of a Three-Day Notice

In addition to stating the correct amount of past due rent and the dates for which it is due (see the next section), your three-day notice must contain all of the following:



### Checklist for Uncontested Three-Day Notice Eviction

Step	Earliest Time to Do It
<input type="checkbox"/> 1. Prepare the Summons (or Summonses, if there is more than one tenant) and Complaint and make copies. (Chapter 6)	Any day after the rent is due—for example, on or after the second of the month when the rent is due on the first. (If rent due date falls on Saturday, Sunday, or holiday, it's due the next business day.)
<input type="checkbox"/> 2. Prepare and serve the three-day notice on the tenant.	Late in the third day after service of the three-day notice.
<input type="checkbox"/> 3. File the Complaint at the courthouse and have the Summons(es) issued. (Chapter 6)	The fourth day after service of the three-day notice, or, if the third day after service falls on a Saturday, Sunday, or holiday, the second business day after that third day.
<input type="checkbox"/> 4. Have the sheriff, the marshal, or a friend serve the Summons and Complaint. (Chapter 6)	As soon as possible after filing the Complaint and having the Summons(es) issued.
<input type="checkbox"/> 5. Prepare Request for Entry of Default, Judgment, Declaration, and Writ of Possession. (Chapter 7)	While you're waiting for five-day (or 15-day, if Complaint not personally served) response time to pass.
<input type="checkbox"/> 6. Call the court to find out whether or not tenant(s) has filed written response.	Just before closing on the fifth day after service of Summons, or early on the sixth day. (Do not count holidays that fall on weekdays, however. Also, if fifth day after service falls on weekend, or holiday, count the first business day after that as the fifth day.)
<input type="checkbox"/> 7. Mail copy of Request for Entry of Default to tenant(s), file original at courthouse. Also file Declaration and Proof of Service, and have clerk issue Judgment and Writ for Possession for the property. (Chapter 7)	Sixth day after service of Summons and Complaint. (Again, count first business day after fifth day that falls on weekend or holiday.)
<input type="checkbox"/> 8. Prepare letter of instruction for, and give writ and copies to, sheriff, or marshal. (Chapter 7)	As soon as possible after above step. Sheriff or marshal won't evict for at least five days after posting notice.
<input type="checkbox"/> 9. Change locks after tenant vacates.	As soon as possible.
<b>For Money Judgment</b>	
<input type="checkbox"/> 10. Prepare Request for Entry of Default, Judgment, and, if allowed by local rule, Declaration in Support of Default Judgment (or a Declaration in Lieu of Testimony). (Chapter 7)	As soon as possible after property is vacant.
<input type="checkbox"/> 11. Mail Request for Entry of Default copy to tenant, file request at courthouse. If Declaration in Lieu of Testimony allowed, file that too, and give clerk judgment and writ forms for money part of judgment. If testimony required, ask clerk for default hearing. (Chapter 7)	As soon as possible after above.
<input type="checkbox"/> 12. If testimony required, attend default hearing before judge, testify, and turn in your judgment form for entry of money judgment. (Chapter 7)	When scheduled by court clerk.
<input type="checkbox"/> 13. Apply security deposit to cleaning and repair of property, and to any rent not accounted for in judgment, then apply balance to judgment amount. Notify tenant in writing of deductions, keeping a copy. Refund any balance remaining. If deposit does not cover entire judgment, collect balance of judgment. (Chapter 9)	As soon as possible after default hearing. Deposit must be accounted for within three weeks of when the tenants vacate.

- Your tenant(s)'s name(s).
- A description of the property: street address and apartment or unit number, city, county, and state.
- A demand that the tenant(s) pay the stated amount of rent due within three days or move. If you just demand the rent and do not set out the alternative of leaving, your notice is fatally defective.
- A statement that you will pursue legal action (or declare the lease/rental agreement "forfeited") if the tenant does not pay the entire rent due or move.
- Information on to whom, where, and how the rent is to be paid.
- An indication—such as a signature by you, your manager, or other person you authorize to sign three-day notices—that the notice is from you. You don't need to date the notice, but it doesn't hurt.



Some rent control ordinances require three-day notices to pay rent or quit to contain special warnings. Check Appendix 1 and your ordinance if your property is subject to rent control.

## How to Determine the Amount of Rent Due

It's essential that you ask for the correct amount of rent in your three-day notice. That may seem easy, but a demand for an improper amount is the most common defect in a three-day notice. If, at trial, the court finds that the rent due at the time the three-day notice was served was less than the amount demanded in the notice (in other words, the notice overstated the rent), you will lose the lawsuit. (See *Ernst Enterprises, Inc. v. Sun Valley Gasoline, Inc.* (1983) 139 Cal. App. 3d 355 and *Nouratchan v. Miner* (1985) 169 Cal. App. 3d 746.)

To calculate the correct amount, follow these rules.

**Rule 1:** Never demand anything in a Three-Day Notice to Pay Rent or Quit other than the amount of the past due rent. Do not include late charges, check-bounce or other fees of any kind, interest, utility charges, or anything else, even if a written lease or rental agreement says you're entitled to them.

Does this mean that you cannot legally collect these charges? No. It simply means you can't legally include them in the Three-Day Notice to Pay Rent or Quit or recover them in an unlawful detainer lawsuit. You can

deduct these amounts from the security deposit or sue for them later in small claims court. (See Chapter 20 of *The California Landlord's Law Book: Rights & Responsibilities*.) You can evict a tenant for failure to pay legitimate utility or other nonrent charges, even though you can't recover or ask for those charges in an unlawful detainer lawsuit. (See "Using the Three-Day Notice to Perform Covenant or Quit" in Chapter 4.)

**Rule 2:** Assuming the rent is due once a month and the tenant simply does not pay the rent for the month, you are entitled to ask for the full month's rent in your notice. The amount of rent due is not based on the date the three-day notice is served, but on the whole rental period. Thus, if rent is due in advance the first of every month, and you serve a three-day notice on the 5th, you should ask for the whole month's rent—that's what's overdue.

**Rule 3:** If the tenancy is already scheduled to terminate because you have given a 30-day, 60-day, or other notice to that effect, you must prorate the rent due. For example, if the tenant's \$900 monthly rent is due June 1, but you gave her a 30-day notice about three weeks earlier, on May 10, the tenancy is terminated effective June 10. Your three-day notice served after June 1 should demand only \$300, the rent for June 1 through 10. Because this can get tricky, we don't recommend terminating a tenancy in the middle of the month or other rental period. If you serve a three-day notice after having served a 30-day or 60-day notice, you risk confusing the tenant and losing an unlawful detainer action. (See Chapter 3.)

**Rule 4:** To arrive at a daily rental amount, always divide the monthly rent by 30 (do this even in 28-, 29-, or 31-day months).

**Rule 5:** If the tenant has paid part of the rent due, your demand for rent must reflect the partial payment. For example, if the monthly rent is \$800 and your tenant has paid \$200 of that amount, your three-day notice must demand no more than the \$600 balance owed.

**Rule 6:** You do not have to credit any part of a security deposit (even if you called it last month's rent) toward the amount of rent you ask for in the three-day notice. In other words, you have a right to wait until the tenant has moved, to see if you should apply the deposit to cover any necessary damages or cleaning. (See *Volume 1*, Chapter 5.) Even if you called the

money “last month’s rent,” the tenant is entitled to have this credited—before termination of the tenancy—only if and when he has properly terminated the tenancy with a 30-day or 60-day notice, or has actually moved out.

Here are a few examples of how rent should be calculated for purposes of a three-day notice.

**EXAMPLE:** Tom has been paying \$1,000 rent to Loretta on the first of each month, as provided by a written rental agreement. On October 6, Tom still hasn’t paid his rent, and Loretta serves him with a three-day notice to pay the \$1,000 or leave. (Loretta has, in effect, given Tom a five-day grace period; she could have given him the notice on October 2.) Even though the rental agreement provides for a \$10 late charge after the second day, Loretta should not list that amount in the three-day notice.

**EXAMPLE:** Teresa’s rent of \$900 is due the 15th of each month for the period of the 15th through the 14th of the next month. Teresa’s check for the period from October 15 through November 14 bounced, but Linda, her landlord, doesn’t discover this until November 15. Now Teresa not only refuses to make good on the check, but also refuses to pay the rent due for November 15 through December 14. It’s now November 20. Teresa owes Linda \$1,800 for the two-month period of October 15–December 14, and that’s what the notice should demand. Linda should not add check-bouncing charges or late fees to the amount. And even though Teresa promises to leave “in a few days,” rent for the entire period of October 15 through December 14 is already past due, and Linda has the right to demand it.

**EXAMPLE:** Terri and her landlord, Leo, agree in writing that Terri will move out on July 20. Terri’s \$900 rent is due the first of each month, in advance for the entire month. Terri will only owe rent for the first 20 days of July, due on the first day of that month. If Terri doesn’t pay up on July 1, the three-day notice Leo should serve her shortly thereafter should demand this 20 days’ rent, or 1/30th of the monthly rent ( $\$900/30 = \$30/\text{day}$ ) for each of the 20 days, a total of \$600.

**EXAMPLE:** Tony pays \$950 rent on the first of each month under a one-year lease that expires July 31. On June 30, he confirms to his landlord, Lana, that he’ll be leaving at the end of July, and he asks her to consider his \$1,000 security deposit as the last month’s rent for July. Lana has no obligation to let Tony do this, and can serve him a three-day notice demanding July’s rent of \$950 on July 2, the day after it’s due. As a practical matter, however, Lana might be wiser to ask Tony for permission to inspect the property to see if it’s in good enough condition to justify the eventual return of the security deposit. If so, there’s little to be gained by giving Tony a three-day notice and suing for unpaid rent, since by the time the case gets before a judge, Lana will have to return the security deposit. (This must be done within 21 days after Tony leaves. See *The California Landlord’s Law Book: Rights & Responsibilities*, Chapter 20.)

## Special Rules for Rent Control Cities

You can’t evict a tenant for refusal to pay a rent increase that was illegal under a rent control ordinance, even if the tenant also refuses to pay the part of the rent that is legal under the ordinance.

**EXAMPLE:** Owsley rents out his Santa Monica two-bedroom apartments for a reasonable \$650 per month. After a year of renting to Tina on a month-to-month basis, Owsley gave Tina a notice raising the rent to \$750. When Tina refused to pay the increase, Owsley served her with a three-day notice demanding that she pay the additional \$100 or move. Unfortunately for Owsley, Santa Monica’s rent control board allowed only a 7% increase that year, so that the most Owsley can legally charge is \$695. Since the three-day notice demanded more rent than was legally due (under the rent control ordinance), Tina will win any lawsuit based on the three-day notice.

**EXAMPLE:** Suppose Tina refused to pay any rent at all, in protest of the increase. Tina does owe Owsley the old and legal rent of \$650. But since Owsley’s three-day notice demanded \$750, more rent than was legally due, the notice is defective. Owsley will lose any eviction lawsuit based on this defective

notice, even though Tina refuses to pay even the legal portion of the rent, because the three-day notice must precisely demand the correct rent.

A three-day notice is also defective under a rent control ordinance if the landlord at any time collected rents in excess of those allowed under the ordinance and failed to credit the tenant with the overcharges, even though she now charges the correct rent and seeks to evict based only on nonpayment of the legal rent. Since the previously collected excess rents must be credited against unpaid legal rent, any three-day notice that doesn't give the tenant credit for previous overcharges is legally ineffective because it demands too much rent.

**EXAMPLE:** Lois rented the apartments in her Los Angeles building for \$700 a month. In April, she served Taylor with a notice increasing the rent to \$800, effective May 1. Taylor paid the increase (without complaint) in May and June. In July, when Taylor was unable to pay any rent at all, Lois learned, after checking with the Rent Adjustment Commission, that the maximum legal rent was \$721. She therefore served Taylor with a three-day notice demanding this amount as the rent for July.

After filing an unlawful detainer complaint based on the nonpayment of this amount, Lois lost the case and had to pay Taylor's court costs and attorney's fees. Why? First, since her rent increase notice had demanded an illegally high rent, it was void. The legal rent therefore was still \$700. Second, in May and June, Lois collected a total of \$200 more than that legal rent, which had to be credited against the \$700 Taylor did owe. Taylor therefore owed only \$500. Since Lois' three-day notice demanded more than this, it was ineffective.

Some rent control ordinances impose special requirements on rent increase notices. Under state law for month-to-month tenancies, all that's required is a written, notice of 30 days (60 days for a rent increase of 10% or more over 12 months) that clearly states the address of the property and the new rent—see Chapter 14 of *The California Landlord's Law Book: Rights & Responsibilities*. Quite a few rent-controlled cities require rent increase notices to list a justification or itemization of rent increases and other information.

A rent increase notice that fails to comply with all requirements imposed by both state and local law is of no effect. Therefore, any later Three-Day Notice to Pay Rent or Quit based on the tenant's failure to pay the increased amount is void because, by definition, it demands payment of more rent than is legally owed, either by asking for the increased rent or by failing to credit previous "excess" payments. In short, a landlord will lose any eviction lawsuit based on this sort of defective notice.

**EXAMPLE:** When Opal raised the rent on her Beverly Hills apartment unit from \$700 to \$775, an increase allowed under that city's rent control ordinance, she thought everything was okay. When she prepared her 60-day rent increase notice, however, she forgot about the part of the ordinance requiring a landlord to justify and itemize the rent increase and state in the notice that her records were open to inspection by the tenant. Opal collected the \$775 rent for three months. The next month, when her tenant Renee failed to pay rent, Opal served her with a three-day notice demanding \$775. When the case got to court, the judge told Opal her rent increase notice hadn't complied with city requirements and was ineffective, leaving the legal rent at \$700. Since Renee had paid the extra \$75 for three months, she was entitled to a \$225 credit against this amount, so that she owed \$475. Since Opal's three-day notice demanded \$775, it too was ineffective, and Renee won the eviction lawsuit.

These problems occur most often in cities with "moderate" to "strict" rent control ordinances, which set fixed rents that a landlord cannot legally exceed without board permission. (See *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 4.) To remind you, moderate to strict rent control cities include Berkeley, Santa Monica, Palm Springs, East Palo Alto, Thousand Oaks, West Hollywood, Los Angeles, San Francisco, and Beverly Hills.

These problems are far less likely to occur in cities with "mild" rent control, including Oakland, San Jose, Hayward, and Los Gatos, where if the tenant fails to contest a rent increase, the increase is usually considered legally valid. Even if the tenant does contest the increase

in these “mild” cities, the proper legal rent will be quickly decided by a hearing officer, making it less likely the landlord will be caught by surprise later if she has to evict for nonpayment of rent.

The moral of all this is simple: Pay close attention to any rent control ordinance in the city in which your property is located. Ask yourself the following questions:

- Have you owned the premises at all times when the tenant was living there?
- If not, did the previous owner fully comply with your rent control law?
- If so, have you fully complied with the notice requirements for rent increases and charged the correct rent?

If your answer is “no” to either of the last two questions, your tenant may be due a refund before you can evict for nonpayment of rent.

If your answer to these questions is “yes,” have you fully complied with all other provisions of the rent control ordinance? If so, you are probably in a position to legally evict the tenant for nonpayment of rent.

### Good-Faith Mistakes

Cities that require registration of rents (Berkeley, Santa Monica, East Palo Alto, Los Angeles, Palm Springs, Thousand Oaks, and West Hollywood) must limit the sanctions against landlords who make good-faith mistakes in the calculation of rents. (Civ. Code § 1947.7.)

### How to Fill Out a Three-Day Notice

A sample Three-Day Notice to Pay Rent or Quit and instructions for filling it out appear below. A blank tear-out form is included in the forms section in the back of this book. You may tear out the form or use a photocopy. We recommend using a photocopy, because you will probably use this form more than once.



Appendix 3 contains a tear-out Three-Day Notice to Pay Rent or Quit. The CD-ROM that accompanies this book also includes this form. Instructions for using the CD and a list of file names are in Appendix 2.

### Sign Pay or Quit Notices Yourself

A pay or quit notice signed by your lawyer may trigger the Fair Debt Collection Practices Act. This Act (15 U.S.C. §§ 1692 and following) governs debt collectors and requires, among other things, that debtors be given 30 days in which to respond to a demand for payment. A federal appellate court in New York has ruled that when an attorney signs a pay or quit notice, he or she is acting as a debt collector. Consequently, the tenant must have 30 days to pay or quit, regardless of the state’s three-day provision. (*Romea v. Heiberger* 163 F.3d 111 (2d Cir. 1998).)

Although this ruling applies only to New York landlords, there is no reason why a tenant in California could not bring an identical lawsuit. To date, we are aware of none. To easily protect yourself (or avoid the dubious honor of being the test case), tell your lawyer that you want to sign pay or quit notices yourself.

### Step 1: Fill In the Tenant’s Name

The first blank is for the name(s) of the tenant(s) to whom the three-day notice is addressed. This normally should include the tenant(s) whose name(s) is (are) listed on a written lease or rental agreement, or with whom you orally entered into a rental agreement, plus the names, if known, of any other adult occupants of the property.

The California Supreme Court has ruled that in order to evict an adult who claims to be a tenant but is not on the lease or rental agreement, the landlord must provide the person with notice of the unlawful detainer action and an opportunity to be heard. This usually means naming the person as a defendant in the suit. For example, if a married couple occupies an apartment but only the husband signed the lease, the landlord must still name both the husband and wife as defendants. Although this rule technically only applies to unlawful detainer complaints (see Chapter 6), not necessarily to the three-day notice, it’s still a good idea to follow it here as well and name all adult occupants in the notice. (C.C.P. § 1174.25; *Arrieta v. Mahon* (1982) 31 Cal. 3d 381, 182 Cal. Rptr. 770.)

## Step 2: Fill In the Address

The next spaces are for the address of the premises. Include the street address, city and county, and apartment number if your tenant lives in an apartment or condominium unit.

In the unlikely event the unit has no street address, use the legal description of the premises from your deed to the property, along with an ordinary understandable description of where the place is located (for example, “the small log cabin behind the first gas station going north on River Road from Pokeyville”). You can retype the notice to make room for the legal description or staple a separate property description as an attachment to the notice and type “the property described in the attachment to this notice” in place of the address.

## Step 3: Fill In the Rent Due

The next space is for the amount of rent due and the dates for which it is due. You must state this figure accurately. (See “How to Determine the Amount of Rent Due,” above.)

## Step 4. Fill In Payment Information

The next spaces tell the tenant to whom, where, and how to pay the rent, as follows.

Under “RENT IS TO BE PAID TO,” check the box next to “the undersigned” if the person who signs the notice (such as the manager or owner) will receive the rent. If someone else will receive the rent, check the box next to “the following” and list the name of that person.

Under “AT THE FOLLOWING ADDRESS,” give the address where the rent should be paid (do not list a post office box unless you want the rent to be mailed to one). Give the telephone number of the person who will accept the rent.

Under “IN THE FOLLOWING MANNER,” check one or more boxes indicating how the rent will be accepted. If you check “in person,” be sure to list the days and hours when someone will be present to accept the rent. For example, the office hours for a resident manager might be “Monday through Friday, 9:00 AM through 5:00 PM.” If you check “by mail ...” only, rent is legally paid when mailed, regardless of when you receive it.



## Do not omit any information on your three-day notice.

Failure to include all of the information called for on the form may make the notice legally ineffective. If your tenant refuses to move and you attempt to evict on the basis of a legally defective three-day notice, you’ll be tossed out of court and will have to begin all over, with a new three-day notice.

## Step 5: Sign and Date the Notice and Make Copies

The “ultimatum” language—that the tenant either pay the rent within three days or move out, or you’ll bring legal action—and the “forfeiture” language are already included in our printed form. All you need to add are your signature and the date you signed it. The date is not legally required, but it helps to clarify when the rent was demanded. This date must not be the same day the rent was due, but at least one day later.

Be sure to make several photocopies for your records; the original goes to the tenant. If you serve a notice on more than one tenant (see the next section), you can give the others copies.

## Step 6: Complete the Proof of Service Box on Your Copy

At the bottom of the Three-Day Notice to Pay Rent or Quit is a “Proof of Service,” which indicates the name of the person served, the manner of service, and the date(s) of service. You or whoever served the notice on the tenant should fill out the Proof of Service on your copy of the three-day notice and sign it. You do not fill out the Proof of Service on the original notice that is given to the tenant. If more than one person is served with the notice, there should be a separate Proof of Service (on a copy of the notice) for each person served. Save the filled-out Proof(s) of Service—you’ll need this information when you fill out the Complaint and other eviction forms.

## Serving the Three-Day Notice on the Tenant

The law is very strict about when and how the Three-Day Notice to Pay Rent or Quit must be given to (“served on”) your tenant(s). Even a slight departure from the rules may cause the loss of your unlawful detainer



**Three-Day Notice to Pay Rent or Quit**

To: Tyrone Tenant  
(name)

Tenant(s) in possession of the premises at 123 Market Street, Apartment 4  
(street address)

City of San Diego, County of San Diego, California.

Please take notice that the rent on these premises occupied by you, in the amount of \$ 400, for the period from June 1, 20xx to June 30, 20xx, is now due and payable.

YOU ARE HEREBY REQUIRED to pay this amount within THREE (3) days from the date of service on you of this notice or to vacate and surrender possession of the premises. In the event you fail to do so, legal proceedings will be instituted against you to recover possession of the premises, declare the forfeiture of the rental agreement or lease under which you occupy the premises, and recover rents, damages, and costs of suit.

RENT IS TO BE PAID TO:

☒ the undersigned, or

☐ the following person: \_\_\_\_\_

AT THE FOLLOWING ADDRESS: 123 Maple Street, La Mesa  
\_\_\_\_\_, California, phone: (619) 123-4567;

IN THE FOLLOWING MANNER:

☒ In person. Usual days and hours for rent collection are: 3 p.m. to 8 p.m. Monday through Saturday

☐ by mail to the person and address indicated above

☐ by deposit to account \_\_\_\_\_ at \_\_\_\_\_, a financial institution  
located within 5 miles of your rental at \_\_\_\_\_, California

☐ by electronic funds transfer procedure previously established.

Date: June 5, 20xx Don Pandlord  
Owner/Manager

**Proof of Service**

I, the undersigned, being at least 18 years of age, served this notice, of which this is a true copy, on \_\_\_\_\_, one of the occupants listed above as follows:

☐ On \_\_\_\_\_, I delivered the notice to the occupant personally.

☐ On \_\_\_\_\_, I delivered the notice to a person of suitable age and discretion at the occupant's residence/business after having attempted personal service at the occupant's residence, and business, if known. On \_\_\_\_\_, I mailed a second copy to the occupant at his or her residence.

☐ On \_\_\_\_\_, I posted the notice in a conspicuous place on the property, after having attempted personal service at the occupant's residence, and business, if known, and after having been unable to find there a person of suitable age and discretion. On \_\_\_\_\_, I mailed a second copy to the occupant at the property.

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

Date: \_\_\_\_\_ Signature \_\_\_\_\_

lawsuit if it is contested. As ever, if your property is covered by a local rent control ordinance, be sure to check for any special requirements, such as mandatory language to be included in the notice, before using the forms in this book.

## When to Serve the Notice

The three-day notice can be given to your tenant any day after the rent is due, but not on the day it is due. For example, if the rent is due on the first day of each month, a notice given to the tenant on that day has no legal effect. If the due date falls on a Saturday, Sunday, or holiday, rent is still due on that day, unless your lease or rental agreement specifies that it will be due on the next business day. The three-day notice cannot be given until the day after that.

**EXAMPLE:** Tyson pays monthly rent, due in advance on the first of each month. If the first falls on a Monday holiday, and since Tyson's lease states that rent is due on the next business day when the date falls on a Saturday, Sunday, or holiday, Tyson's rent is not legally due until Tuesday. This means the three-day notice cannot be served until Wednesday.

This is one of the many technicalities of eviction law that can haunt an unlawful detainer action from the very beginning. Bizarre as it sounds, if you give the notice only a day prematurely, and the tenant still doesn't pay the rent during the two to three weeks he contests the lawsuit, you may still lose the case if the tenant spots your mistake.

**EXAMPLE:** When Tiffany didn't pay her \$400 rent to Leslie on Friday, January 1, Leslie prepared a Three-Day Notice to Pay Rent or Quit, giving it to Tiffany the next day. Unfortunately for Leslie, she forgot that her lease included a clause that specified that when the rent due date falls on a Saturday, Sunday, or holiday, the rent would be due on the next business day. Therefore, the rent wasn't actually due until January 4, even though Tiffany's lease said it was due on the first, because January 1, New Year's Day, was a legal holiday; January 2 was a Saturday; and January 3 was a Sunday. Oblivious to all this, Leslie waited the three days, and, as Tiffany still hadn't paid the rent, Leslie filed her unlawful

detainer suit on January 6. Tiffany contested it, and the case finally went to court on February 5. Even though Tiffany clearly owed Leslie the rent for January and February, Leslie lost the lawsuit because she gave Tiffany the three-day notice before the rent was legally past due. Now Leslie will have to pay Tiffany's court costs as well as her own. Assuming Tiffany has still not paid the rent, Leslie can, of course, serve a new three-day notice and begin the eviction procedure again, poorer but wiser.

In *LaManna v. Vognar* (1993) 4 Cal. App. 4th Supp. 4, 22 Cal. Rptr. 2d 501, a landlord lost a case for the same reason illustrated in the example above. The three-day notice was served on a Wednesday. The third day after that was a Saturday. The tenant had until the end of the following Tuesday to pay the rent because Saturday and Sunday were not business days and Monday was a legal holiday, Memorial Day. The landlord could not legally file the eviction lawsuit until Wednesday. Unfortunately, he filed one day early, on Tuesday, and lost the case as a result.

## If You Routinely Accept Late Rent

There is no law that gives tenants a five-day or any other grace period when it comes to paying the rent. If, however, you regularly allow your tenant to pay rent several days or even weeks late, you may have problems evicting the tenant. If your three-day notice demands the rent sooner than the tenant is accustomed to paying it, the tenant might be able to successfully defend an eviction based on that three-day notice.

**EXAMPLE:** You routinely allowed the tenant to pay by the fifth of the month, even though the rental agreement states that the rent is due on the first. If you now serve a notice on the second or third day of the month, the tenant may be able to convince a judge that you served the notice too early.

This is called an "estoppel defense" in legalese. This means that one person (you) who consistently fails to insist on strict compliance with the terms of an agreement (in this case, prepayment of rent on time) may be prevented or stopped ("estopped") from insisting on strict compliance at a later time.



To avoid problems, wait until after any traditional grace period (that is, one that you've given regularly in the past) has expired before serving the three-day notice. Or, if the tenancy is one from month to month, and the rental agreement requires that rent be paid on the first of the month, you can reinstate the original payment terms with a 30-day written notice. Doing so allows you to insist that rent be paid on the first of the month, regardless of past custom. (See *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 3, for more information on and Sample Notice of Reinstatement of Terms of Tenancy.)

**Grace periods.** Rent is due on a certain day under many rental agreements (usually on the first of the month), but late charges aren't usually imposed until several days later. Even so, the rent is still "due" on the date the rental agreement or lease says it's due, and the Three-day Notice to Pay Rent or Quit can be served the day after that (taking into account extension of the due date by Saturdays, Sundays, and holidays). Any so-called grace period, after which late charges kick in, has no effect on when the three-day notice can be served.

**EXAMPLE:** Under the lease between Tom Tenant and Lisa Landlady, Tom's \$900 rent is due on the first day of each month, with a \$25 late charge if paid after the 5th. Despite this so-called five-day grace period, the three-day notice can be served on the day after the first of the month, assuming the first doesn't fall on a Saturday, Sunday, or holiday.



Despite the above, it generally isn't a good idea to serve a three-day notice before any late charge comes due, for two reasons: First, if the rental agreement or lease provides for a grace period and you never made a habit of insisting on the rent before the late charge came due, the tenant may be able to successfully defend against the three-day notice if he or she was not accustomed to paying it on time. (See "If You Routinely Accept Late Rent," above.)

Second, it isn't a good business practice to serve a three-day notice right away. It breeds unnecessary tenant resentment and, in effect, gives the tenant a three-day grace period anyway.

## Who Should Serve the Three-Day Notice

Anyone at least 18 years old (including you) can legally give the three-day notice to the tenant. It's often best to have it served by someone else. That way, if the tenant refuses to pay the rent and contests the resulting eviction suit by falsely claiming he didn't receive the notice (this is rare), at trial you can present the testimony of someone not a party to the lawsuit who is more likely to be believed by a judge. Of course, you must weigh this advantage against any time, trouble, or expense it takes to get someone else to accomplish the service and, if necessary, appear in court.

## Who Should Receive the Notice

Ideally, each person named on the three-day notice should be personally handed a copy of it. This isn't always possible, though, and under certain circumstances it isn't necessary. If you rented your property to just one tenant, whose name alone appears on any written rental agreement or lease, serve that person with the three-day notice. (However, as discussed below in the next section, you can sometimes actually give the notice to a co-occupant of the property who isn't listed on the lease if you can't locate the tenant who is listed on the lease.)

If you rented to two or more tenants whose names are all on the lease or rental agreement, it is legally sufficient to serve just one. (*University of Southern California v. Weiss* (1962) 208 Cal. App. 2d 759, 769, 25 Cal. Rptr. 475.) If your agreement is only with one tenant and that tenant has a roommate who is not on the agreement, the notice should be served on both. (See *Briggs v. Electronic Memories & Magnetics Corp.* (1975) 53 Cal. App. 3d 900.) We recommend doing this to minimize the possibility that a nonserved tenant will try to defend against any subsequent eviction lawsuit on the ground that he didn't receive the notice.

You normally have no obligation to serve the three-day notice on occupants who are not named in the written rental agreement or lease and with whom you've had no dealings in renting the property. (See *Chinese Hospital Foundation Fund v. Patterson* (1969) 1 Cal. App. 3d 627, 632, 8 Cal. Rptr. 795, and *Four Seas Investment Corp. v. International Hotel Tenants Ass'n* (1978) 81 Cal. App. 3d 604.) However, as discussed above, it's best to serve all adult occupants of the premises.

## How to Serve the Three-Day Notice on the Tenant

The law is very strict on how the three-day notice must be served on the tenant. It is not enough that you mail the notice or simply post it on the door. There are three legal methods of service for a three-day notice.

### Personal Service

The best method of service of a three-day notice is to simply have someone over 18 hand your tenant the notice.

If the tenant refuses to accept the notice, it is sufficient to drop or lay it at his feet. It is unnecessary and possibly illegal to force it on the tenant's person. If the tenant slams the door in your face before you can leave it at her feet, or talks to you through the door while refusing to open it, it's okay to slide it under the door or shout, "I'm leaving a notice on your doormat" while doing so.

Handing the notice to any other person, such as someone who lives with your tenant but is not listed as a cotenant on the written rental agreement, is not sufficient except as described just below under "Substituted Service on Another Person."

### Substituted Service on Another Person

If the tenant to whom you're attempting to give the three-day notice never seems to be home, and you know where she is employed, you should try to personally serve her there. If you are unable to locate the tenant at either place, the law allows you to use "substituted service" in lieu of personally giving the notice to the tenant. In order to serve the notice this way, you must:

1. Make at least one attempt to personally serve the tenant at her home, but not succeed and
2. Make one attempt to serve her with the notice at work, but still not succeed, and
3. Leave the notice, preferably with an adult, at the tenant's home or workplace. (Although one California court ruled that a 16-year-old boy (but not a younger child) could be served a three-day notice on behalf of the tenant, the ruling is not binding on all California courts (*Lehr v. Crosby* (1981) 123 Cal. App. 3d Supp.7), and

4. Mail a copy of the notice to the tenant at home by ordinary first-class mail. (C.C.P. § 1162(2).)

Ask for the name of the person with whom you leave the notice; you'll need to include it in the complaint you'll file to begin your lawsuit (Chapter 6). If you can't get a name, you can just put a description of the person.



**Accomplishing Substituted Service.** Substituted service of the notice is not completed, and the three-day period specified in the notice does not start running, until you have left the copy with the "substitute" person and mailed the second copy to the tenant at home. The first day of the notice's three-day period is the day after both these steps are accomplished.

**EXAMPLE:** Tad should have paid you his rent on the first of the month. By the fifth, you're ready to serve him with a Three-Day Notice to Pay Rent or Quit. When you try to personally serve it on him at home, a somewhat hostile buddy of Tad's answers the door, saying he's not home. Your next step is to try his workplace—the one listed on the rental application he filled out when he moved in. You go there only to find that Tad called in sick that day. You can give the notice to one of his coworkers or to his friend at home, with instructions to give it to Tad when they see him. After that, you must mail another copy of the notice to Tad at home by ordinary first-class mail. Substituted service is complete only after both steps have been accomplished.

### "Posting-and-Mailing" Service

If you can't find the tenant or anyone else at her home or work (or if you don't know where she is employed), you may serve the three-day notice through a procedure known as "posting and mailing" (often referred to as "nail-and-mail"). To serve the notice this way, you must do the following, in the order indicated:

1. Make at least one unsuccessful attempt to personally serve the tenant at home
2. If you know where the tenant works, try unsuccessfully to serve her at work
3. Post a copy of the notice on the tenant's front door, and
4. Mail another copy to the tenant at home by first-class mail. (C.C.P. § 1162(3) and *Hozz v. Lewis* (1989) 215 Cal. App. 3d 314.)

You may want to send the letter by certified mail and save the mailing receipt the Postal Service gives you. You can send it return receipt requested, so you know when the tenant received it; on the other hand, some people routinely refuse to sign for and accept certified mail.

Another way around this problem is to talk to the tenant—before you file an eviction lawsuit—and pin her down as to having received the notice. (Don't ask, "Did you get my three-day notice?" Ask, "When are you going to pay the rent I asked for in the three-day notice I left you?")

**EXAMPLE:** Tyler's rent is due on the 15th of each month, but he still hasn't paid Lyle, his landlord, by the 20th. Lyle can seldom find Tyler (or anyone else) at home, and doesn't know where (or if) Tyler works. Since that leaves no one to personally or substitute serve with the three-day notice, Lyle has only the "posting-and-mailing" alternative. Lyle can tape one copy to the door of the property and mail a second copy to Tyler at that address by first-class mail. Lyle should begin counting the three days the day after both of these tasks are accomplished. The three-day period after which Lyle can bring an unlawful detainer lawsuit is counted the same way as if the notice were served personally.

**Proof of Service.** Be sure the person who serves the three-day notice completes the Proof of Service at the bottom on an extra copy of the notice. (See above.)

## After the Three-Day Notice Is Served

Your course of action after the three-day notice is served depends on whether or not the tenant pays the rent in full and whether the tenant stays or leaves.

### The Tenant Stays

If the tenant offers the rent in full any time before the end of the three-day period, you must accept it if it's offered in cash, certified check, or money order. If you've routinely accepted rent payments by personal check, you must accept a personal check in response to a three-day notice unless you notified the tenant

otherwise in the notice itself. If you refuse to accept the rent (or if you insist on more money than demanded in the notice, such as late charges) and file your lawsuit anyway, your tenant will be able to contest it and win. (The only way to evict a month-to-month tenant who never pays until threatened with a three-day notice is to terminate his tenancy with a 30-day or 60-day notice—see Chapter 3.)

If a properly notified tenant doesn't pay before the notice period passes, the tenancy is terminated. You then have a legal right to the property, which you can enforce by bringing an unlawful detainer action. (See below and Chapter 6.)



### **You do not have to accept rent after the end of the notice period.**

In fact, if you do accept rent (even part payments), you reinstate the tenancy and waive your right to evict based on the three-day notice. For example, if on the third day after service of a three-day notice demanding \$300 rent you accept \$100, along with a promise to pay the remaining \$200 "in a few days," you will have to start over again with a three-day notice demanding only the balance of \$200, and base your lawsuit on that. If you proceed with the lawsuit based on the three-day notice demanding all the rent, the tenant may be able to successfully defend the lawsuit on the ground that you waived the three-day notice by accepting part of the rent. Of course, you may want the partial payment badly enough to be willing to serve a new notice. In that case, accept it with one hand and serve a three-day notice for the remaining unpaid amount.

## The Tenant Moves Out

Once in a great while, a tenant will respond to a Three-Day Notice to Pay Rent or Quit by actually moving out within the three days. If the tenant doesn't pay the rent, but simply moves after receiving the three-day notice, he still owes you a full month's rent since rent is due in advance. The tenant's security deposit may cover all or most of the rent owed. If not, you may decide to sue the tenant in small claims court for the balance.



Nolo's book *Everybody's Guide to Small Claims Court in California*, by Ralph Warner, shows how to sue in small claims court.

What if the tenant simply sneaks out within the three-day period, but doesn't give you the keys or otherwise make it clear he's turning over possession of the property to you? In that case, you can't legally enter and take possession unless you either use a procedure called "abandonment" or file an eviction suit anyway. If you file suit, you must serve the summons and complaint by posting and mailing, as described in "Serving the Papers on the Defendant" in Chapter 6, and obtain a judgment. For more information on the abandonment alternative, and to decide whether it may be suitable under your circumstances, see *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 19.

## When to File Your Lawsuit

As we have stressed, you cannot begin your unlawful detainer lawsuit until the three-day notice period expires. The rules for counting the days are as follows:

- Service is complete when you personally serve the three-day notice or, if you serve the notice by "substituted service" or "posting-and-mailing" service, three days after you have both (1) mailed the notice and (2) either given it to another adult or posted it (as described above).
- If you serve more than one tenant with notices, but not all on the same day, start counting only after the last tenant is served.
- Do not count the day of service as the first day. The first day to count is the day after service of the notice was completed.
- Do not file your lawsuit on the third day after service is complete. The tenant must have three full days after service to pay the rent or leave before you file suit.

- If the third day is a business day, you may file your lawsuit on the next business day after that.
- If the third day falls on a Saturday, Sunday, or legal holiday, the tenant has until the end of the next business day to pay the rent. You cannot file your suit on that business day, but must wait until the day after that. (*LaManna v. Vognar* (1993) 4 Cal. App. 4th Supp. 4, 22 Cal. Rptr. 2d 510.)

In the past, some judges (particularly some in Los Angeles County) ruled that if you served your three-day notice by posting-and-mailing or by "substituted service" on another person—both of which involve mailing a second copy to the tenant—you have to wait an extra five days for the tenant to pay or move, before filing suit. Now, however, the law is clear. You do not have to wait an extra five days before filing your complaint. (*Losornio v. Motta* (1998) 67 Cal. App. 4th 110, 78 Cal. Rptr. 2d 799.) You should be prepared to bring this to the attention of the judge during any default hearing or trial if the judge or tenant raises the issue. (See "Getting a Money Judgment for Rent and Costs" in Chapter 7 and "The Trial" in Chapter 8.)

**EXAMPLE:** Toni failed to pay the rent due on Monday, November 1. On November 11, Les personally served Toni with the three-day notice at home. The first day after service is Friday the 12th, the second day is Saturday the 13th, and the third day is Sunday the 14th. Since third day falls on a Sunday, Toni has until the end of the next business day—Monday the 15th—to pay the rent or leave. Only on the 16th can Les file suit. ■

## Eviction by 30-Day or 60-Day Notice

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**T**he second most common basis for unlawful detainer lawsuits (after failure to pay rent) is the tenant's failure to move after receiving a 30-day notice terminating the tenant's month-to-month tenancy.

## Overview of the Process

Before you can file an unlawful detainer lawsuit against a tenant, you must legally terminate the tenancy. If the tenant has a month-to-month tenancy, you can use a 30-day notice to terminate the tenancy if the tenant has occupied the rental for less than a year. In most cases, you must give a tenant 60 days' notice if he or she has lived in the property a year or more. (See "30-Day, 60-Day, and 90-Day Notices," below.) Also, a 90-day notice is required to terminate certain government-subsidized tenancies. In most circumstances, you don't have to state a reason for terminating the tenancy. This general rule, however, has some very important exceptions, discussed below.

If the tenant doesn't leave by the end of the 30 (or 60) days, you can file your lawsuit to evict the tenant.

### Checklist for 30- or 60-Day Notice Eviction

Below is an overview of steps involved in evicting on the grounds covered in this chapter, assuming that the tenant defaults. We cover some of the subjects (for example, filing a complaint and default judgment) in later chapters. As you work your way through the book, you may want to return to this chart to see where you are in the process.

## When a Tenancy May Be Terminated With a 30-Day or 60-Day Notice

There are basically two types of residential tenancies. The first is a "fixed-term" tenancy, where the property is rented to the tenant for a fixed period of time, usually a year or more, and which is normally formalized with a written lease. During this period, the landlord may not raise the rent and may not terminate the tenancy except for cause, such as the tenant's failure to pay the rent or violation of other lease terms. This type of tenancy may not be terminated by a 30- or 60-day notice.

## Negotiating With Tenants

If a lease is in effect and for some important reason, such as your need to sell or demolish the building, you want the tenants out, you might try to negotiate with them. For example, offer them a month or two of free or reduced rent if they'll move out before their lease expires. Of course, any agreement you reach should be put in writing.

The second type of tenancy is a "periodic tenancy," a tenancy for an unspecified time in which the rent is paid every "period"—month, week, every other week, and so on. A "periodic tenancy" that goes from month to month may be terminated with a 30-day notice (subject to the two restrictions introduced earlier). If the rental period is shorter than one month, the notice period can be shorter, too. The point is that the notice must only be as long as the rental period.

Because the overwhelming majority of residential tenancies are month to month, we assume 30 or 60 days is the correct notice period for terminating a periodic tenancy using the procedures in this chapter.

How do you tell if your tenancy is month to month? If you have been accepting monthly rent from your tenant without a written agreement or if you have a written rental agreement that either is noncommittal about a fixed term or specifically provides for 30 days' notice to terminate the tenancy, the tenancy is from month to month. It is also a month-to-month tenancy if you (or the owner from whom you purchased the property) continued to accept rent on a monthly basis from a tenant whose lease had expired.

## Impermissible Reasons to Evict

A landlord can evict a tenant without a reason, but not for the wrong reason. This means you can't evict a tenant:

- because of race, marital status, religion, sex, having children, national origin, or age (Unruh Civil Rights Act, Civ. Code §§ 51–53)
- if the tenant exercised the "repair-and-deduct" remedy (by deducting the cost of habitability-related repairs from the rent) within the past six



Checklist for 30- or 60-Day Notice Eviction		
Step		Earliest Time to Do It
<input type="checkbox"/> 1.	Prepare and serve the 30- or 60-day notice on the tenant.	Any time. Immediately after receipt of rent is best.
<input type="checkbox"/> 2.	Prepare the Summons (or Summonses, if there is more than one tenant) and Complaint and make copies. (Chapter 6)	The 30th or 60th day after service of the 30-day or 60-day notice is complete.
<input type="checkbox"/> 3.	File the Complaint at the courthouse and have the Summons(es) issued. (Chapter 6)	The first day after the notice period expires.
<input type="checkbox"/> 4.	Have the sheriff, the marshal, or a friend serve the Summons and Complaint. (Chapter 6)	As soon as possible after filing the Complaint and having the Summons(es) issued.
<input type="checkbox"/> 5.	Prepare Request for Entry of Default, Judgment, Declaration, and Writ of Possession. (Chapter 7)	While you're waiting for five-day (or 15-day, if Complaint not personally served) response time to pass.
<input type="checkbox"/> 6.	Call the court to find out whether or not tenant(s) have filed written response.	Just before closing on the fifth day after service of Summons, or early on the sixth day. (Do not count holidays that fall on weekdays, however. Also, if fifth day after service falls on weekend or holiday, count the first business day after that as the fifth day.)
<input type="checkbox"/> 7.	Mail copy of Request for Entry of Default to tenant(s), file original at courthouse. Also file Declaration and Proof of Service, and have clerk issue Judgment and Writ for Possession for the property. (Chapter 7)	Sixth day after service of Summons and Complaint. (Again, count first business day after fifth day that falls on weekend or holiday.)
<input type="checkbox"/> 8.	Prepare letter of instruction for, and give writ and copies to, sheriff or marshal. (Chapter 7)	As soon as possible after above step. Sheriff or marshal won't evict for at least five days after posting notice.
<input type="checkbox"/> 9.	Change locks after tenant vacates.	As soon as possible.
<b>For Money Judgment</b>		
<input type="checkbox"/> 10.	Prepare Request for Entry of Default, Judgment, and, if allowed by local rule, Declaration in Lieu of Testimony. (Chapter 7)	As soon as possible after property is vacant.
<input type="checkbox"/> 11.	Mail Request for Entry of Default copy to tenant, file request at courthouse. If Declaration in Lieu of Testimony allowed, file that too, and give clerk judgment and writ forms for money part of judgment. If testimony required, ask clerk for default hearing. (Chapter 7)	As soon as possible after above.
<input type="checkbox"/> 12.	If testimony required, attend default hearing before judge, testify, and turn in your judgment form for entry of money judgment. (Chapter 7)	When scheduled by court clerk.
<input type="checkbox"/> 13.	Apply security deposit to cleaning and repair of property, and to any rent not accounted for in judgment, then apply balance to judgment amount. Notify tenant in writing of deductions, keeping a copy. Refund any balance remaining. If deposit does not cover entire judgment, collect balance of judgment. (Chapter 9)	As soon as possible after default hearing. Deposit must be accounted for within three weeks of when the tenants vacate.

months, unless the notice states a valid reason for terminating the tenancy

- because he complained about the premises to local authorities, exercised rights given to tenants by law, or engaged in behavior protected by the First Amendment—for example, organizing other tenants. (See *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 15.)

If you evict for an illegal reason, or if it looks like you are trying to, your tenant can defend the unlawful detainer lawsuit or sue you later for damages. Generally, if any of the elements listed below are present, you should think twice about evicting with a 30-day or 60-day notice that doesn't state a valid reason. Even though you state a valid reason, the tenant can still sue if she believes the eviction was illegally motivated. Conversely, even if you state no reason, your eviction will be upheld if you prevail over the tenant's defense. The main reason to state a valid reason (except in rent control areas where the reason must be stated) is to convince the tenant not to be paranoid.

Think twice about evicting with such a notice and without a valid business reason when any of the following are true:

- The tenant is a member of a racial, ethnic, or religious minority group.
- The tenant is gay.
- The tenant has children and your other tenants don't.
- The tenant has recently (say within a year) complained to the authorities about the premises.
- The tenant has recently (within six months) lawfully withheld rent.
- The tenant has organized a tenants' union.
- The tenant is handicapped.
- The tenant is elderly.
- The tenant receives public assistance.

If none of these factors is present (and the premises are not covered by a rent control ordinance or rented under a government-subsidized program), you will probably have no problem using a 30-day or 60-day notice, without specifying a reason, to terminate a tenancy.

## Federal Housing Programs

"Section 8" refers to Section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f), and "Section 236" refers to Section 236 of the National Housing Act of 1949 (12 U.S.C. § 1517z-1). Both are federal laws providing government housing assistance to low-income families. For additional information about the more stringent requirements for eviction from government-subsidized rentals, see Civ. Code § 1954.535 and the following cases: *Appel v. Beyer* (1974) 39 Cal. App. 3d Supp. 7; *Gallman v. Pierce* (1986, N.D. Cal.) 639 F. Supp. 472; *Mitchell v. Poole* (1988) 203 Cal. App. 3d Supp. 1; *Gersten Companies v. Deloney* (1989) 212 Cal. App. 3d 1119; and 24 C.F.R. §§ 450 and following, §§ 882 and following.

## 30-Day, 60-Day, and 90-Day Notices

To terminate a month-to-month tenancy, you must give written notice to the tenant. You need give only 30 days' notice if your tenant has occupied the property for less than a year, 60 days' notice if the tenant has been in the property a year or more, and 90 days' notice for certain government-subsidized tenancies. Regardless of which notice is required, you must comply with any just-cause eviction provisions of any applicable rent control ordinances—which usually includes listing the reason for the termination of tenancy.

### 30-Day Notice for Tenancies of Less Than a Year

If your tenant has occupied your property for less than a year, you must give him 30 days' notice to terminate a residential month-to-month tenancy. (Civ. Code § 1946.1(c).) This is true even for tenancies of shorter periodic length, such as tenancies from week to week. (However, the *tenant* need give only a week's notice to terminate a week-to-week tenancy, and so forth.) Of course, you can give the tenant *more* than 30 days' notice if you want to. The requirement is that you give at least 30 days' written notice.





**Landlords cannot reduce their notice period to less than 30 days.**

Although agreements reducing the landlord's notice period to as few as seven days were previously legal under Civ. Code § 1946, termination of residential tenancies, as opposed to commercial ones, is now governed by the newer Section 1946.1, which does not refer to the possibility of such a reduced notice period. We believe Civ. Code § 1946, with its language allowing the parties to agree in writing to a shorter notice period, no longer applies to residential tenancies.

One final word of caution: The “less than a year” requirement refers to how long the tenant has actually lived in the property, not the length of the most recent lease term. For example, if your tenant has lived in your rental house for the past year and a half, but signed a new six-month lease eight months ago (so that the lease expired and the tenancy is now month to month), you must give 60 days' notice. (See Section 2, below.) In other words, you start counting as of the date the tenant started living in the unit, not when you both signed the most recent lease or rental agreement.

## 60-Day Notices for Tenancies of a Year or More

If your tenant has occupied the premises for a year or more, you must deliver a 60-day notice to terminate a month-to-month tenancy. (Civ. Code § 1946.1.) Again, this is true even for periodic tenancies of shorter duration, such as week to week, and regardless of any provision in your rental agreement that specifies a shorter notice period.

This 60-day notice requirement does not work both ways. A month-to-month residential tenant who has occupied your property for a year or more does not have to give you 60 days' notice. The tenant need give you only 30 days' notice to terminate the tenancy.

If you give your tenant a 60-day notice, the tenant has the right to give *you* a written 30-day (or more) notice, which (as long as it's less than your 60-day notice) will terminate the tenancy sooner than the expiration of the 60-day notice that you delivered.

**EXAMPLE:** Lois Landlord has rented to Terri Tenant for over a year. On March 1, Lois serves Terri with a 60-day notice, terminating her tenancy effective April 29. Terri, however, quickly finds a new place

and now wants to leave sooner than that. So, on March 10, she gives Lois a written 30-day notice, which terminates her tenancy on April 9. Assuming she vacates on or before that date, she won't be responsible for any rent past April 9.

There is one extremely narrow exception to the rule that a landlord must give a tenant 60 days' notice of termination of a month-to-month tenancy, where the tenant has lived in the property a year or more. This is where the landlord is in the process of selling the property to an individual who is going to live in it. Even if the tenant has occupied the property for a year or more, the landlord can terminate the tenant's month-to-month tenancy with a 30-day notice if all the following are true:

- The property is a single-family home or condominium unit (as opposed to an apartment unit).
- You are selling the property to an actual (“bona fide”) purchaser (as opposed to transferring it to a relative for less than fair market price, for example).
- The buyer is an individual (not a corporation, partnership, or LLC) who intends to occupy the property for a year.
- You and the buyer have opened an escrow for the sale to be consummated.
- You give the 30-day notice within 120 days of opening the escrow.
- You have never previously invoked this exception, with respect to this property.

Unless all the above things are true, you must give the tenant at least 60 days' written notice to terminate a month-to-month or other periodic tenancy, if the tenant has occupied the property for a year or more.

## 90-Day Notices to Terminate Government-Subsidized Tenancies

If you receive rent or other subsidies from federal, state, or local governments, you may evict only for certain reasons. Acceptable reasons for termination are usually listed in the form lease drafted by the agency or in the agency's regulations. If your tenants receive assistance from a local housing authority under a “Section 8” or other similar program of a federal, state, or local agency, you must very specifically state the reasons for termination in the 90-day notice, *not* a 30-day or 60-day

notice, saying what acts the tenant did, and when, that violated the lease or otherwise constitute good cause for eviction. (Civ. Code § 1953.545; *Wasatch Property Management v. Del Grate*, 35 Cal. 4th 1111 (2005).) Allowable reasons for eviction are contained in the standard form leases the housing authority requires the landlord to use.

If you decide to terminate a Section 8 tenant because you no longer wish to participate in the program, simply say so on the termination form. Keep in mind, however, that you cannot terminate for this reason until that tenant's initial rental term has elapsed. In addition, during the 90-day period prior to termination, you cannot increase the rent or otherwise require any subsidized tenant to pay more than he or she paid under the subsidy.

## Rent Control and Just Cause Eviction Ordinances

"Just cause" requirements for evictions severely limit the reasons for which landlords can evict tenants. Landlords are authorized to terminate a month-to-month tenancy only for the reasons specifically listed in the particular ordinance. Most just cause provisions also require that the reason be clearly and specifically stated on the notice (see below) as well as in a subsequent unlawful detainer complaint.

### Cities That Require Just Cause for Eviction

Berkeley	Hayward	San Francisco
Beverly Hills	Los Angeles	Santa Monica
East Palo Alto	Oakland	Thousand Oaks
Glendale	San Diego	West Hollywood
	(2+ years' tenancy)	

If your property is in a city that requires just cause, the usual rules for 30- or 60-day notice evictions simply do not apply. Even if an eviction is authorized under state law, a stricter local rent control ordinance may forbid it. For example, San Francisco's rent control ordinance, which does not permit eviction of a tenant solely on the basis of a change in ownership, has been held to prevail over state law, which allows eviction for this reason if the tenancy is month to month. (*Gross v. Superior Court* (1985) 171 Cal. App. 3d 265.)

**EXAMPLE:** You wish to terminate the month-to-month tenancy of a tenant who won't let you in the premises to make repairs, even though you have given reasonable notice (all ordinances consider this a just cause for eviction). You must give the tenant a 30-day (or 60-day) notice that complies with state law and that also states in detail the reason for the termination, listing specifics, such as dates the tenant refused to allow you in on reasonable notice. If the tenant refuses to leave and you bring an unlawful detainer suit, the complaint must also state the reason for eviction (this is usually done by referring to an attached copy of the 30-day or 60-day notice). If the tenant contests the lawsuit, you must prove at trial that the tenant repeatedly refused you access, as stated in the notice.

Before you start an eviction by giving a 30-day or 60-day notice, you should check Appendix 1, which lists the just cause requirements of each city with rent control, and a current copy of your ordinance. (For a more thorough discussion of rent control, see *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 4.) Do this carefully. If you are confused, talk to your local landlords' association or an attorney in your area who regularly practices in this field.

Although cities' ordinances differ in detail, the basic reasons that constitute "just cause" are pretty much the same in all of them. Most rent control ordinances allow the following justifications for terminating a month-to-month tenancy with a 30-day or 60-day notice.

## Just Cause Protection in San Diego and Glendale

Two non-rent-control California cities—San Diego and Glendale—require a landlord in certain cases to have “just cause” to terminate a tenancy, even one from month-to-month. In your termination notice, you must state which reason justifies your actions.

**San Diego.** San Diego’s just-cause-eviction rules apply only where the tenant has lived in the property for two years. (San Diego Municipal Code §§ 98.0701 through 98.0760.) With such tenants, the landlord may terminate the tenancy only for the following reasons:

- Nonpayment of rent, violation of “a lawful and material obligation or covenant of the tenancy,” commission of a nuisance, or illegal use of the premises. These grounds duplicate those in state law. You may use the three-day notice to pay rent or quit, notice to cure covenant or quit, or unconditional notice to quit (nuisance or illegal use) in the forms appendix in this book when terminating such tenancies.
- Refusal to give the landlord reasonable access to the rental unit for the purpose of making repairs or improvements, or for the purpose of inspection as permitted or required by the lease or by law, or for the purpose of showing the rental unit to a prospective purchaser or mortgagee. If the lease or rental agreement has a clause requiring the tenant to allow access, you may use a three-day notice to cure the covenant or quit. If the tenancy is month to month, you may also choose an unconditional 60-day notice of termination.
- Refusal “after written request of a landlord” to sign a lease renewal “for a further term of like duration with similar provisions.”
- To make necessary repairs or construction when removing the tenant is reasonably necessary to do the job, provided the landlord has obtained all necessary permits from the city.
- When the landlord intends to withdraw all rental units in all buildings or structures on a parcel of land from the rental market, or when the landlord, a spouse, parent, grandparent, brother, sister, child, grandchild, or a resident manager plans to occupy

the rental unit. These grounds may be used only if the tenancy is month to month (under state law, you must give 60 days’ written notice).

**Glendale.** Glendale’s just-cause-eviction rules (Glendale Municipal Code §§ 9.30.010 through 9.30.100) allow eviction in the following situations (all termination notices must be in writing and state the landlord’s reasons for terminating):

- Nonpayment of rent, breach of a “lawful obligation or covenant,” nuisance, or illegal use of the premises or permitting any illegal use within 1,000 feet of the unit. “Illegal use” specifically includes all offenses involving illegal drugs, such as marijuana (without a doctor’s prescription). In these situations, you may use a three-day notice.
- When an unauthorized subtenant not approved by the landlord is in possession at the end of a lease term.
- When a tenant refuses to allow the landlord access “as permitted or required by the lease or by law.” If the lease or rental agreement has a clause requiring the tenant to allow access, you might use a three-day notice to cure covenant or quit, or an unconditional 60-day notice of termination of tenancy if the tenancy is month-to-month.
- When the landlord offers a lease renewal of at least one year, serves a notice on the tenant of the offer at least 90 days before the current lease expires, and the tenant fails to accept within 30 days.
- When the landlord plans to demolish the unit or perform work on it that costs at least eight times the monthly rent, and the tenant’s absence is necessary for the repairs; or when the landlord is removing the property from the rental market, or seeks to have a spouse, grandparent, brother, sister, in-law, child, or resident manager (if there is no alternate unit available) move into the unit. Under state law, these grounds may be used only if the tenancy is month-to-month, and 30 or 60 days’ written notice is given. The landlord must pay the tenant relocation expenses of two months’ rent for a comparable unit plus \$1,000.

## Don't Get Tripped Up by Rent Control Violations

Any violation of a rent control ordinance by you can be used by a tenant to avoid eviction—even if the part of the ordinance you violated has nothing to do with the basis for eviction. For example, in many “strict” rent control cities, as well as in Los Angeles, where ordinances require landlords to register their properties with rent boards, a landlord who fails to register all the properties in a particular building cannot evict any tenant in any of the units for any reason—even if that particular unit is registered. In these cities, a tenant could be months behind in the rent and destroying his apartment, but the landlord would be legally unable to evict because he hadn’t registered some other apartment in the same building with the rent board.

Similarly, a landlord’s minor violation, such as failing to keep a tenant’s security deposit in a separate account (if required), can be used by a tenant to defend an eviction based on the tenant’s repeated loud parties. Problems of this sort can be avoided if you comply with every aspect of your city’s ordinance.

*lord’s Law Book: Rights & Responsibilities*, Chapter 13) to show it to prospective buyers or to repair or maintain it, you may evict the tenant.

Most ordinances require that tenants be given a written warning before their tenancy is terminated by notice. Thus, if the tenant refuses you entry, you should serve, at least three days before you give the tenant a 30-day or 60-day notice, a written demand that the tenant grant access. Check your ordinance to make sure you comply with its requirements for such a notice. Before you begin an eviction on this ground, you should answer “yes” to all the following questions:

- Was your request to enter based on one of the reasons allowed by statute, such as to make repairs or show the property? (See *The California Landlord’s Law Book: Rights & Responsibilities*, Chapter 13, for more on this.)
- Did you give your tenant adequate time to comply with the notice?
- Did you send a final notice setting out the tenant’s failure to allow access and clearly stating your intent to evict if access was not granted?

You should use a 30-day or 60-day notice to evict on this ground, if the tenancy is month to month. If the tenant rents under a lease, you can use only a three-day notice to evict, and then only if the lease has a clause specifically requiring the tenant to give you access to the property.

## Nonpayment of Rent

Although you can use a 30-day or 60-day notice to evict a tenant who doesn’t pay the rent, you should almost always use a three-day notice (see Chapter 2) instead. A longer notice will delay the eviction, and you can’t sue for back rent in your unlawful detainer action. (*Saberi v. Bakhtiari* (1985) 169 Cal. App. 3d 509, 215 Cal. Rptr. 359.) It is, however, arguable that if you use a longer notice based on nonpayment of rent, you deprive the tenant of her right to a conditional notice that gives her the chance to stay if she pays the rent. Although the long notice gives more time, it’s unconditional, unlike a three-day notice to pay rent or quit.

## Refusal to Allow Access

If, following receipt of a written warning from you, the tenant continues to refuse you or your agent access to the property (assuming you give the tenant reasonable notice of your need to enter—see *The California Land-*

## Relatives

A landlord who wants the premises to live in herself (or for her spouse, parent, or child) may use a 30-day or 60-day notice to ask the existing tenants to leave, provided the tenancy is month to month.

Some ordinances also allow landlords to evict tenants so that other relatives of the landlord (such as stepchildren, grandchildren, grandparents, or siblings) may move in. Because some landlords have abused this reason for eviction—for example, by falsely claiming that a relative is moving in—most cities strictly limit this option by requiring the termination notice to include detailed information, such as the name, current address, and phone number of the relative who will be moving in.

In addition, severe rent control cities forbid the use of this ground if there are comparable vacant units in the building into which the landlord or relative could

move. Some cities allow only one unit per building to be occupied this way, and most cities do not allow nonindividual landlords (corporations or partnerships) or persons with less than a 50% interest in the building to use this reason. Los Angeles, West Hollywood, and a few other cities go so far as to require landlords evicting for this reason to compensate the tenant who must move out. (See Appendix 1.)

Finally, rent control ordinances and state law ordinances now provide for heavy penalties against landlords who use a phony-relative ploy. State law requires that in rent control cities that mandate registration, landlords who evict tenants on the basis of wanting to move a relative (or the landlord) into the property must have their relative actually live there for six continuous months. (Civ. Code § 1947.10.) Individual cities may require a longer stay (San Francisco specifies 36 months). If this doesn't happen, the tenant can sue the landlord in court for actual and punitive damages caused by the eviction.

If a court determines that the landlord or relative never intended to stay in the unit, the tenant can move back in. The court can also award the tenant three times the increase in rent she paid while living somewhere else and three times the cost of moving back in. If the tenant decides not to move back into the old unit, the court can award her three times the amount of one month's rent of the old unit and three times the costs she incurred moving out of it. The tenant can also recover attorney fees and costs. (Civ. Code § 1947.10.) A court awarded one San Francisco tenant \$200,000 for a wrongful eviction based on a phony-relative ploy. (*Beeman v. Burling* (1990) 216 Cal. App. 3d 1586, 265 Cal. Rptr. 719.)

If you are planning to evict on the ground of renting the premises to a family member, you should answer "yes" to all the following questions:

- Are you an "owner" as that term is described in your ordinance for the purpose of defining who has the right to possession?
- If a relative is moving in, does he qualify under the ordinance?
- Will the person remain on the premises long enough to preclude a later action against you by the tenant?
- Does your notice provide the specific information required by the ordinance?

- Are you prepared to pay the tenant compensation, if required by your local ordinance?

## Remodeling

A landlord who wants possession of the property to conduct remodeling or extensive repairs can use a 30-day or 60-day notice to evict tenants in some circumstances if the tenancy is month to month. Because of the ease with which this ground for eviction can be abused, most cities severely limit its use. For instance, the Los Angeles ordinance requires that at least \$10,000 or more per unit (depending on the size of the property) be spent on the repairs or remodeling before eviction on this ground is allowed, and some ordinances (for example, those in Berkeley and Santa Monica) allow this ground only where the repairs are designed to correct local health or building code violations. In some cities, the landlord, once the repairs are made, must give the evicted tenant the right of "first refusal" to re-rent the property. All cities with just cause eviction provisions require that the landlord obtain all necessary building and other permits before eviction. Finally, most cities allow the tenant to sue the landlord for wrongful eviction if the work isn't accomplished within a reasonable time (usually six months) after the tenant leaves.

If you plan to evict using this ground, you should answer "yes" to all the following questions:

- Is the remodeling really so extensive that it requires the tenant to vacate the property?
- Have you obtained all necessary permits from the city?
- Are you prepared to pay the tenant compensation if required by ordinance?
- Have you made all necessary arrangements with financing institutions, contractors, and so on, in order to make sure the work will be finished within the period required by the ordinance?
- Have you met all other requirements of your local ordinance, such as giving proper notice to the tenant, offering the tenant the right to relocate into any vacant comparable unit, or giving the tenant the opportunity to move back in once the apartment is remodeled?

## Condominium Conversion or Demolition

A landlord may evict to permanently remove the property from the rental market by means of condominium conversion or “good faith” demolition (not motivated by the existence of the rent control ordinance). But the notice of termination (which must specify the reason) is only the last step in a very complicated process. (In addition, the tenancy must be month to month.) All cities allow this ground to be used only after the landlord has obtained all the necessary permits and approvals. Most cities have very stringent condominium-conversion or antidemolition ordinances that require all sorts of preliminary notices to tenants. A state statute, the Ellis Act, allows this ground for eviction, but cities can (and do) restrict application of the law, including requiring notice periods of more than 30 or even 60 days—in some cases, as much as 120 days or even a year. In recent years, the legislature has considered bills that would affect the removal of residential rental property from the market. (One proposal would limit the landlord’s right to demolish residential rental property occupied by low-income tenants; another would limit the ability of individual cities to impose restrictions on condominium conversions.) Be sure to check for new legislation, on the state and local levels, if your eviction is a first step toward hoped-for condominium conversion.

## Violation of Rental Agreement

If the tenant violates a significant provision of the rental agreement, you can use a 30-day or 60-day notice to initiate an eviction if the tenancy is month to month. This ground also justifies evicting with a three-day notice, but if one is used, the tenant must, in some cases, be given the opportunity to correct the violation. (See Chapter 4.) As a general rule, however, you should use a 30-day or 60-day notice if the tenancy is month to month. (See below.)



**Violation of New Terms.** Some cities prohibit eviction for violation of a rental agreement provision that was added to the original rental agreement, either by means of a notice of change in terms of tenancy or by virtue of a new rental agreement signed after the original one expired.

Even in places without rent control, judges are reluctant to evict based on breaches other than nonpayment of rent. First, the breach must be considered “substantial”—that is, very serious. Second, you should be able to prove the violation with convincing testimony from a fairly impartial person, such as a tenant in the same building who is willing to testify in court. If you’re unable to produce any witnesses who saw (or heard) the violation, or who heard the tenant admit to it, forget it.

Before you begin an eviction on this ground, you should answer “yes” to the following questions:

- Was the violated provision part of the original rental agreement?
- If the provision was added later, does your ordinance allow eviction on this ground?
- Can you definitely prove the violation?
- Was the violated provision legal under state law and the ordinance? (See *The California Landlord’s Law Book: Rights & Responsibilities*, Chapter 2.)

## Damage to the Premises

If the tenant is disturbing other tenants or seriously damaging the property, you can use a 30-day or 60-day notice to initiate an eviction procedure. Under state law, a three-day notice to quit that doesn’t give the tenant the option of correcting the problem may also be used. Some rent control cities (Berkeley, East Palo Alto, and Hayward) require that a landlord give the tenant a chance to correct the violation. (See Chapter 4.)

## Illegal Activity on the Premises

If the tenant has committed (or, in some cities, been convicted of) serious illegal activity on the premises, a landlord may initiate an eviction by using a 30-day or 60-day notice if the tenancy is month to month. This ground also justifies using a three-day notice, but you should use the longer one if possible. (See Chapter 4.) You should document the illegal activity thoroughly (see Chapter 4), keeping a record of your complaints to police and the names of the persons with whom you spoke. And although not required by ordinance, it’s often a good idea to first give the tenant written notice to cease the illegal activity. If he fails to do so, the fact that you gave notice should help establish that there’s a serious and continuing problem.





**Drug-Dealing Tenants.** As stated earlier, it is essential to do everything you can to evict any tenant who you strongly suspect is dealing illegal drugs on the property. A landlord who ignores this sort of problem can face severe liability.

## Should You Use a Three-Day, 30-Day, or 60-Day Notice?

As we have pointed out, some reasons for eviction under a 30-day or 60-day notice, such as making too much noise or damaging the property, also justify evicting with a three-day notice, as described in Chapter 4. If you can evict a tenant by using a three-day notice, why give the tenant a break by using a 30-day or 60-day notice? Simply because a tenant is more likely to contest an eviction lawsuit that accuses her of misconduct and gives her a lot less time to look for another place to live. In places where you don't have to show just cause to give a 30-day or 60-day notice, you also avoid having to prove your reason for evicting (unless you must overcome a tenant's defense based on your supposed retaliation or discrimination).

Finally, if you base the three-day notice on trivial violations, such as a tenant's having a goldfish or parakeet contrary to a no-pets clause in the rental agreement, but you really want her out because she can't get along with you, the manager, or other tenants, you are likely to lose your unlawful detainer suit. Judges are not eager to let a tenant be evicted, with only three days' notice, for a minor breach of the rental agreement or causing an insignificant nuisance or damage. If, on the other hand, you use a 30-day or 60-day notice and rent in an area that does not require just cause to evict, you don't have to state a reason. In other words, by following this approach, you have one less significant problem to deal with.

On the other hand, if your tenant has an unexpired fixed-term lease, you cannot use an unconditional 30-day or 60-day notice to evict. You then can only evict if the tenant violates the lease; in that case, the three-day notice must usually give the tenant the option of correcting the violation and staying in the premises.

Finally, you should use a three-day notice if your reason for evicting a month-to-month tenant is nonpayment of rent (and you want the rent). That's

because you won't be able to sue for back rent in an unlawful detainer lawsuit based on a 30-day or 60-day notice (you'll have to bring a separate, small claims court suit to get the rent). Unless you are prepared to go to two courts (or want to forgo the back rent in favor of not having to prove a reason for the termination), you'll need to use a three-day notice. (*Saberi v. Bakhtiari*, (1985) 169 Cal. App. 3d 509, 215 Cal. Rptr. 359.)

## Preparing the 30-Day or 60-Day Notice

A sample Notice of Termination of Tenancy, with instructions, appears below. As you can see, filling in the notice requires little more than setting out the name of the tenant, the address of the property, the date, and your signature.

List the names of all adult occupants of the premises, even if their names aren't on the rental agreement.



Blank, tear-out versions of the Notice of Termination of Tenancy are in Appendix 3. The CD-ROM also includes these forms. Instructions for using the CD are in Appendix 2.



As mentioned above, some rent control ordinances that require just cause for eviction require special additions to 30-day or 60-day notices. For example, San Francisco's ordinance requires that every notice on which an eviction lawsuit is based tell the tenant that she may obtain assistance from that city's rent control board. Also, San Francisco's Rent Board regulations require that the 30-day notice quote the Section that authorizes evictions for the particular reason listed.

In addition, many rent control ordinances require that the reason for eviction be stated specifically in the notice (state law doesn't require any statement of a reason). For example, under most just cause provisions, a notice based on the tenant's repeated refusal to allow the landlord access to the property on reasonable notice must state at least the dates and times of the refusals. And for terminations based on wanting to move in a relative or remodel the property, extra notice requirements are specified in detail in the ordinance or in regulations adopted by the rent control board. Check Appendix 1 for general information, and be sure to get a current copy of your rent control ordinance and follow it carefully.

(Tenancy Less Than One Year)

City of \_\_\_\_\_, County of \_\_\_\_\_, California.

**if you are in a rent control city or are otherwise required by law to state a reason for terminating a tenancy, insert it here**

**the instructions for completing the Proof of Service are the same as those described under the Three-Day Notice to Pay Rent or Quit (Chapter 2) with one exception—service by certified mail may be used**

Date: \_\_\_\_\_ Signature \_\_\_\_\_



**30-Day Notice of Termination of Tenancy**

(Tenancy Less Than One Year)

To: Rhoda D. Renter  
(name)Tenant(s) in possession of the premises at 950 Parker Street  
(street address)City of Palo Alto, County of Santa Clara, California.

YOU ARE HEREBY NOTIFIED that effective 30 DAYS from the date of service on you of this notice, the periodic tenancy by which you hold possession of the premises is terminated, at which time you are required to vacate and surrender possession of the premises. If you fail to do so, legal proceedings will be instituted against you to recover possession of the premises, damages, and costs of suit.

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Date: August 3, 20xx
Lani Landlord  
 Owner/Manager
**Proof of Service**

I, the undersigned, being at least 18 years of age, served this notice, of which this is a true copy, on \_\_\_\_\_, \_\_\_\_\_, one of the occupants listed above as follows:

- ☐ On \_\_\_\_\_, \_\_\_\_\_, I delivered the notice to the occupant personally.
- ☐ On \_\_\_\_\_, \_\_\_\_\_, I delivered the notice to a person of suitable age and discretion at the occupant's residence/business after having attempted personal service at the occupant's residence, and business, if known. On \_\_\_\_\_, \_\_\_\_\_, I mailed a second copy to the occupant at his or her residence.
- ☐ On \_\_\_\_\_, \_\_\_\_\_, I posted the notice in a conspicuous place on the property, after having attempted personal service at the occupant's residence, and business, if known, and after having been unable to find there a person of suitable age and discretion. On \_\_\_\_\_, \_\_\_\_\_, I mailed a second copy to the occupant at the property.

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

Date: \_\_\_\_\_

Signature \_\_\_\_\_

Also, if your tenant has made a complaint to you or a local government agency, withheld rent because of a claimed defect in the property, or participated in tenant-organizing activity, your notice should state legitimate, nonretaliatory reasons for terminating the tenancy. (Civ. Code § 1942.5(c); *Western Land Office, Inc. v. Cervantes* (1985) 174 Cal. App. 3d 724.)

You should not list the reason for the termination unless you are in a high-risk situation as described in “Impermissible Reasons to Evict,” above, or the local rent control ordinance or government regulation (for subsidized housing) requires it. If you do have to include the reason, you may wish to check with an attorney or other knowledgeable person in your area to make sure you state it properly and with specificity; this will help assure that your tenant cannot complain that the notice is too vague or void under local law.

## Serving the Notice

The law sets out detailed requirements for serving a 30-day or 60-day notice on a tenant. If you don't comply with them, you could lose your unlawful detainer lawsuit.

### When the Notice Should Be Served

A 30-day or 60-day notice can be served on the tenant on any day of the month. For example, a 60-day notice served on March 17 terminates the tenancy 60 days later, on May 16. (Remember to count 60 days, regardless of whether any intervening month has 28, 29, or 31 days.) This is true even if rent is paid for the period from the first to the last day of each month. There's one exception: if your lease or rental agreement requires notice to be served on a certain day, such as the first of the month.

The best time to serve the notice is shortly after you receive and cash a rent check. Assuming the tenant paid on time, this means the notice is given toward the beginning of the month or rental period, so that the last day of the tenancy will fall only one or two days into the next month. The advantage is that you will already have the rent for almost all of the time the tenant can (legally) remain on the premises. If the tenant refuses to pay any more rent (for the day or two in the

next month), you can just deduct it from the security deposit. (See Chapter 9.)

**EXAMPLE:** Tess has been habitually late with the rent for the last five months of her seven-month occupancy, usually paying on the third day after receiving your three-day notice. On October 2 you knock on Tess's door and ask for the rent. If you luck out and get her to pay this time, cash the check and then serve Tess with a 30-day notice. The last day of the tenancy will be November 1, and she'll owe you only one day's rent. You can deduct this amount from the deposit before you return it, assuming you give the tenant proper written notice of what you are doing.

Of course, if Tess doesn't pay her rent on the 2nd, you can resort to the usual three-day notice. If she still doesn't pay within three days, you can sue for nonpayment of rent as described in Chapter 2.

If you've already collected “last month's rent,” you can serve the 30-day notice (assuming the tenancy has lasted less than a year) on the first day of the last month without worrying about collecting rent first. Do not, however, serve it so that the tenancy ends before the end of the period (the last month) for which you have collected rent. Accepting rent for a period beyond the date you set in the 30-day notice for termination of the tenancy is inconsistent with the notice and means you effectively cancel it. (See *Highland Plastics, Inc. v. Enders* (1980) 109 Cal. App. 3d Supp.1, 167 Cal. Rptr. 353.)

If you serve the 30-day or 60-day notice in the middle of the month, your tenant may not be eager, when the next month comes around, to pay rent for the part of a subsequent month before the tenancy ends. If this happens and you can't settle the issue by talking to your tenant, you can take the prorated rent for the last portion of a month out of the security deposit. (See Chapter 9.) You could also serve the tenant with a three-day notice to pay rent or quit for the prorated rent due. We recommend against this, unless you've given a 60-day notice and the tenant refuses to pay the rent for the following full month. Using two notices increases the chances that you will make a procedural mistake. It complicates the eviction, increases hostility, and probably won't get the tenant out any faster.

If you are giving less than 30 days' notice because your rental agreement allows it but you collect your rent once a month, be sure that the notice doesn't terminate the tenancy during a period for which you've already collected rent. For example, if you collected the rent for August on August 1, serving a seven-day notice any sooner than August 24 would improperly purport to end the tenancy before the end of the paid-for rental period, August 31.

## Who Should Serve the Notice

The 30-day notice may be served by any person over age 18. (See Chapter 2.) Although you can legally serve the notice yourself, it's often better to have someone else serve it. That way, if the tenant refuses to pay the rent and contests the eviction lawsuit by claiming he didn't receive the notice, you can present the testimony of someone not a party to the lawsuit who is more likely to be believed by a judge. Of course, you must weigh this advantage against any time, trouble or expense it takes to get someone else to accomplish the service and, if necessary, appear in court.

## Whom to Serve

As with three-day notices, you should try to serve a copy of the 30-day or 60-day notice on each tenant to whom you originally rented the property. (See Chapter 2.)

## How to Serve the Notice on the Tenant

The notice may be served in any of the ways three-day notices can be served (see Chapter 2):

- by personal delivery to the tenant
- by substituted service on another person, plus mailing, or
- by posting and mailing.

In addition, the notice can be served by certified mail. The statute does not require that it be sent return receipt requested. The return receipt gives you proof that the tenant received the notice, but it also entails a risk, because a tenant can refuse the letter by refusing to sign the receipt. In any case, the post office gives you a receipt when you send anything by certified mail.

If you serve the notice by certified mail, we suggest that you give the tenant an extra five days (in addition to the 30 or 60 days) before filing suit. You may be

wondering why, since you do *not* need to add the extra five days if you serve a three-day or other notice by substituted service plus mailing or by posting and mailing. (In Chapter 2, see "When to File Your Lawsuit" and its explanation of the *Losornio* case that established this rule.) The answer is that, in both a substituted service plus mailing situation and a posting plus mailing situation, there is a chance that the tenant will, in fact, get the benefit of the full period (the person you've served may give the tenant the notice, or the tenant may pick up the posted notice, within the three or 30 or 60 days). When you serve using certified mail only, however, there is no way that the tenant can get the benefit of the full 30 or 60 days, since the notice will necessarily sit in the post office and the mailbag for a day or two at least, and there is no alternative way to receive the notice. For this reason, we think that you should add the five days to service accomplished via certified mail only, although plausible arguments can be made to the contrary. It's best to take the time to serve the 30-day notice personally.



### Remember:

- Do not accept any rent whatsoever for any period beyond the day your tenant should be out of the premises under your notice.
- Accept only rent prorated by the day up until the last day of tenancy, or you'll void your notice and have to start all over again with a new one.
- If you've given a 30-day notice, don't accept any rent at all if you collected "last month's rent" from the tenant, since that's what you apply to the tenant's last month or part of a month.
- Be sure the person serving the notice completes a Proof of Service at the bottom of an extra copy of the notice, indicating when and how the notice was served. (See "Preparing the Three-Day Notice to Pay Rent or Quit" in Chapter 2.)

## When to File Your Lawsuit

Once your 30-day or 60-day notice is properly served, you must wait 30 or 35 (or 60 or 65) days before taking any further action. If you file an unlawful detainer complaint prematurely, you will lose the lawsuit and have to start all over again. Here's how to figure out how long you have to wait:

- Service is complete when you personally serve the notice, or after you have mailed it following substituted service or posting. If you serve it by certified mail, though, you should wait an extra five days before filing suit.
- If you serve more than one tenant with notices, but not all on the same day, start counting only after the last tenant is served.
- Do not count the day of service as the first day. The first day to count is the day after service of the notice was completed.
- The tenant gets 30 or 60 full days after service. Do not file your lawsuit until at least the 31st day (plus any five-day extension on account of serving by certified mail) after service is complete.
- If the 30th or 60th day is a business day, you may file your lawsuit on the next business day after that.
- If the 30th or 60th day falls on a Saturday, Sunday, or legal holiday, the tenant can stay until the end of the next business day. You cannot file your suit on that business day, but must wait until the day after that.

**EXAMPLE:** You personally served Tanya with her 30-day notice on June 3 (the day after she paid you the rent). June 4 is the first day after service, and July 3 is the 30th day. But July 3 is a Sunday, and July 4 is a holiday. This means Tanya has until the end of the next business day, July 5, to vacate. The first day you can file your suit is July 6.

If you had served Tanya on June 3 using any other method of service, she would have an additional five days to leave, and you could file suit on July 11 (or later if July 10 were a Saturday, Sunday, or holiday).

Once you have waited the requisite period, and the tenant has failed to leave, you can proceed to the next phase, which is filing an eviction complaint. We tell you how to do this in Chapter 6. ■

## Eviction for Lease Violations, Property Damage, or Nuisance

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This chapter is about evicting tenants who:

- engage in highly disruptive activity (for example, making unreasonable noise, creating a nuisance, threatening neighbors)
- destroy part or all of the premises
- clearly violate the lease or rental agreement (for example, keeping a pet or subleasing without permission)
- make illegal use of the premises (for example, selling drugs), or
- fail to make a payment (other than rent) that is required under the lease or rental agreement (for example, late fee, security deposit upgrade, utility surcharge). (If you want to evict the tenant for nonpayment of rent, use Chapter 2.)

## When to Use This Chapter

Surprising as it may seem, you may prefer to use a 30-day or 60-day notice to terminate a month-to-month tenancy instead of the three-day notice allowed under these circumstances. Why would you want to take the slower route? First, if you use a three-day notice, you will have to prove your reason for eviction (the tenant's misconduct) in court, whereas with a 30-day or 60-day notice you don't have to (except in cities with rent control that require just cause; see Appendix 1). Second, a tenant who receives a three-day notice for misconduct is a lot more likely to defend the suit. He may want to vindicate his reputation, or get back at you, or simply want some additional time to move. By contrast, if you terminate a month-to-month tenancy with a 30-day or 60-day notice, the tenant has time both to move and to cool off emotionally, and will probably exit quietly without finding it necessary to shoot a hole in your water heater.

Also, to use a three-day notice successfully, the problem you're complaining about must be truly serious. A judge will not order an eviction based on a three-day notice for minor rental agreement violations or property damage. For example, if you base a three-day notice eviction on the fact that your tenant's parakeet constitutes a serious violation of the no-pets clause in the lease, or that one or two noisy parties or the tenant's loud stereo is a sufficient nuisance to justify immediate eviction, you may well lose. The point is

simple: Any time you use a three-day notice short of an extreme situation, your eviction attempt becomes highly dependent on the judge's predilections, and therefore at least somewhat uncertain.

For these reasons, you should resort to three-day notice evictions based on something other than nonpayment of rent only when the problem is serious and time is very important.



**Drug Dealing.** If the tenant is dealing illegal drugs on the property, the problem is serious. A landlord who hesitates to evict a drug-dealing tenant (1) faces lawsuits from other tenants, neighbors, and local authorities; (2) may wind up liable for tens of thousands of dollars in damages; and (3) may even lose the property. Fortunately, you won't be in the ridiculous position of having to argue about the seriousness of drug dealing. California law identifies such activity as an illegal nuisance per se. (C.C.P. § 1161(4).)

It's easier to evict drug-dealing tenants with a 30-day or 60-day notice, especially in cities without rent control. However, if the tenant has a fixed-term lease (which can't be terminated with a 30-day or 60-day notice), you will have no choice but to follow the procedures set forth in this chapter by using a three-day notice to quit. (See "Using and Preparing an Unconditional Three-Day Notice to Quit," below.) You should start by getting other tenants, and neighbors, if possible, to document heavy traffic in and out of the tenant's home at odd hours. Under these circumstances, an attorney is recommended.

## Checklist for Uncontested Nonrent Three-Day Notice Eviction

Here are the steps involved in evicting on the grounds covered in this chapter, if the tenant defaults (doesn't contest the eviction). We cover some of the subjects (for example, filing a complaint and default judgments) in later chapters. As you work your way through the book, you may want to return to this chart to see where you are in the process.

## The Two Types of Three-Day Notices

Two kinds of three-day notices are covered here. The first is called a Notice to Perform Covenant or Quit and is like the three-day notice used for nonpayment of rent

### Checklist for Uncontested Nonrent Three-Day Notice Eviction

Step	Earliest Time to Do It
<input type="checkbox"/> 1. Prepare and serve the three-day notice on the tenant.	Any day the tenant is in violation of the lease, has damaged the property, or has created a nuisance.
<input type="checkbox"/> 2. Prepare the Summons (or Summonses, if there is more than one tenant) and Complaint and make copies. (Chapter 6)	When it's apparent the tenant(s) won't leave on time; don't sign and date it until the day indicated below in Step 3.
<input type="checkbox"/> 3. File the Complaint at the courthouse and have the Summons(es) issued. (Chapter 6)	The first day after the lease term or tenant's notice period expires.
<input type="checkbox"/> 4. Have the sheriff, the marshal, or a friend serve the Summons and Complaint. (Chapter 6)	As soon as possible after filing the Complaint and having the Summons(es) issued.
<input type="checkbox"/> 5. Prepare Request for Entry of Default, Judgment, Declaration, and Writ of Possession. (Chapter 7)	While you're waiting for five-day (or 15-day, if Complaint not personally served) response time to pass.
<input type="checkbox"/> 6. Call the court to find out whether or not tenant(s) has filed written response.	Just before closing on the fifth day after service of Summons, or early on the sixth day. (Do not count holidays that fall on weekdays, however. Also, if fifth day after service falls on weekend or holiday, count the first business day after that as the fifth day.)
<input type="checkbox"/> 7. Mail copy of Request for Entry of Default to tenant(s), file original at courthouse. Also file Summons and Declaration and have clerk issue judgment and writ for possession of the property. (Chapter 7)	Sixth day after service of Summons and Complaint. (Again, count first business day after fifth day that falls on weekend or holiday.)
<input type="checkbox"/> 8. Prepare letter of instruction for, and give writ and copies to, sheriff or marshal. (Chapter 7)	As soon as possible after above step. Sheriff or marshal won't evict for at least five days after posting notice.
<input type="checkbox"/> 9. Change locks after tenant vacates.	As soon as possible.
<b>For Money Judgment</b>	
<input type="checkbox"/> 10. Prepare Request for Entry of Default, Judgment, and, if allowed by local rule, Declaration in Lieu of Testimony. (Chapter 7)	As soon as possible after property is vacant.
<input type="checkbox"/> 11. Mail Request for Entry of Default copy to tenant, file request at courthouse. If Declaration in Lieu of Testimony allowed, file that, too, and give clerk judgment and writ forms for money part of judgment. If testimony required, ask clerk for default hearing. (Chapter 7)	As soon as possible after above.
<input type="checkbox"/> 12. If testimony required, attend default hearing before judge, testify, and turn in your judgment form for entry of money judgment. (Chapter 7)	When scheduled by court clerk.
<input type="checkbox"/> 13. Apply security deposit to cleaning and repair of property, and to any rent not accounted for in judgment, then apply balance to judgment amount. Notify tenant in writing of deductions, keeping a copy. Refund any balance remaining. If deposit does not cover entire judgment, collect balance of judgment. (Chapter 9)	As soon as possible after default hearing. Deposit must be accounted for within three weeks of when the tenants vacate.

(see Chapter 2) in that it gives the tenant the option of staying if he corrects his behavior within the three-day period. If he doesn't, then the tenancy is considered terminated. Most three-day notices fit into this category.

The other type of three-day notice simply tells the tenant to move out in three days. There is no option to correct the behavior. This kind of unconditional notice is allowed only in certain circumstances described below.

We strongly recommend that you use the conditional notice if any guesswork is involved. The consequences of using the unconditional notice can be drastic if the judge later disagrees with you and thinks that the situation called for a conditional notice. In that event, the judge will rule that your unconditional three-day notice was void; you will lose the lawsuit, be liable for the tenant's court costs and attorney's fees, and have to start all over again with a new notice.

## Using the Three-Day Notice to Perform Covenant or Quit

In most situations, you'll use a conditional three-day notice, giving the tenant the option of correcting the violation or moving out.

### When to Use a Conditional Notice

If a tenant who has violated a provision of the lease or rental agreement can correct her behavior, your three-day notice must give her that option. As mentioned, most lease violations are correctable. For instance:

- The tenant who violates a "no-pets" clause can get rid of the pet.
- The tenant who has failed to pay separate charges for utilities, legitimate late charges, or an installment toward an agreed-on security deposit can make the payment.
- The tenant who violates a lease clause requiring him to allow you reasonable access to the property (on proper notice—see *Volume 1*, Chapter 13) can let you in.

The list of potentially correctable lease violations is endless. As a general rule, if the violation isn't of the type listed below, it's probably correctable, and you should use a three-day notice giving the tenant the option of correcting the violation.



Rent control ordinances that require just cause for eviction (many don't) often dictate what kind of notice must be used. For example, Berkeley's ordinance allows eviction of a tenant who damages the property only after she's been given a notice giving her a chance to stop and to pay for the damage. State law does not require the landlord to give any warning, but rather authorizes an unconditional three-day notice to quit in such a circumstance. These two sources of law can be reconciled by giving the tenant two notices—first, the warning or "cease and desist" notice required by the local ordinance, followed by an unconditional three-day notice to quit under state law. This can be very tricky, so if you're unsure about applicable eviction regulations or have any doubt about the validity of your grounds for eviction, a consultation with a landlord-tenant specialist will be well worth the price.

If you attempt to evict a tenant in violation of a city's ordinance, you may be facing more than an unsuccessful eviction. Depending on the circumstances and the city, the tenant may come back at you with a suit of her own, alleging any number of personal injuries—even if the tenant defaults or loses in the underlying eviction action. (*Brossard v. Stotter* (1984) 160 Cal. App. 3d 1067.) And, as always, if you are not in compliance with the entire ordinance, a tenant in an eviction lawsuit may successfully defend on that basis.

Also, some rent control cities preclude eviction for violations of a lease provision if the provision was added to the original agreement, either by means of a notice of change of terms in tenancy or by virtue of a new lease signed by the tenant after the previous one expired. In such cities, a landlord who, for example, rented to a tenant with a pet couldn't later change the terms of the rental agreement with a 30-day notice saying no pets are allowed, then evict for violation of that term after it goes into effect. (Los Angeles's ordinance specifically forbids just this sort of eviction.) This would allow the landlord without grounds for eviction to evade the just cause requirement by changing the terms to assure the tenant's breach. Even in cities that do permit eviction based on after-added clauses, the clauses still must be legal and reasonable. Also, every city's ordinance makes it illegal for a landlord to attempt to evade its provisions. An unreasonable change in the rental agreement that assures a tenant's breach will most likely be considered an attempt to circumvent any just cause requirement, and will not be enforced.



If your property is located in a rent control city that provides for just cause eviction (see Chapter 3), be sure to check Appendix 1 and a current copy of your ordinance for additional eviction and notice requirements that may apply.

Before using the violation-of-lease ground to evict a tenant, ask yourself the following questions:

- Was the violated provision part of the original lease or rental agreement?
- If the provision was added later, does a rent control ordinance in your city preclude eviction on this ground?
- If the violation is correctable (most are), does your three-day notice give the tenant an option to cure the defect?
- Does your city's rent control ordinance impose special requirements on the notice, such as a requirement that it state the violation very specifically, be preceded by a "cease-and-desist" notice, or include a notation that assistance is available from the rent board?

## Preparing a Conditional Three-Day Notice

If you opt for the conditional notice, your three-day notice to perform the lease provision (often termed a covenant or promise) or quit should contain all of the following:

- The tenant's name. List the names of all adult occupants of the premises, even if they did not sign the original rental agreement or lease.
- The property's address, including apartment number if applicable.
- A very specific statement as to which lease or rental agreement provision has been violated, and how.

**EXAMPLE:** "You have violated the Rules and Regulations incorporated by paragraph 15 of the lease, prohibiting work on motor vehicles in the parking stalls, in the following manner: by keeping a partially dismantled motor vehicle in your parking stall."

- A demand that within three days the tenant either comply with the lease or rental agreement provision or leave the premises.

- A statement that you will pursue legal action or declare the lease or rental agreement "forfeited" if the tenant does not cure the violation or move within three days.
- The date and your (or your manager's) signature.

Two sample Three-Day Notices to Perform Covenant or Quit appear below. The instructions for completing the Proof of Service are the same as those described under the Three-Day Notice to Pay Rent or Quit. (See Chapter 2.)



A blank, tear-out version of the Three-Day Notice to Perform Covenant or Quit is in Appendix 3. The CD-ROM also includes this form. Instructions for using the CD are in Appendix 2.

## Using and Preparing an Unconditional Three-Day Notice to Quit

As noted above, under certain circumstances, the three-day notice need not give the tenant the option of correcting the problem. This is true in four kinds of situations:

1. The tenant has sublet all or part of the premises to someone else, contrary to the rental agreement or lease.
2. The tenant is causing a legal nuisance on the premises. This means that he is seriously interfering with his neighbors' ability to live normally in their homes, for example, by repeatedly playing excessively loud music late at night, or by selling illegal drugs on the premises.

If you are tempted to use this ground, be sure that you can prove the problems with convincing testimony from a fairly impartial person, such as a tenant in the same building who is willing to testify in court. If you're unable to produce any witnesses, forget it.

3. The tenant is causing a great deal of damage ("waste," in legalese) to the property. Forget about evicting on this ground for run-of-the-mill damage caused by carelessness. It will work only in extreme cases such as where a tenant shatters numerous windows, punches large holes in walls, or the like. Again, you must be able to prove the damage convincingly.

## Three-Day Notice to Perform Covenant or Quit

To: Tammy Tenant  
(name)

Tenant(s) in possession of the premises at 1234 4th Street,  
(street address)

City of Monterey, County of Monterey, California.

YOU ARE HEREBY NOTIFIED that you are in violation of the lease or rental agreement under which you occupy these premises because you have violated the covenant to:

pay agreed installments of the security deposit in the amount of \$50 per month on the first day of each month (in addition to the rent) until paid

in the following manner:

failing to pay the \$50 on the first day of the month of September 20xx

YOU ARE HEREBY REQUIRED within THREE (3) DAYS from the date of service on you of this notice to remedy the violation and perform the covenant or to vacate and surrender possession of the premises.

If you fail to do so, legal proceedings will be instituted against you to recover possession of the premises, declare the forfeiture of the rental agreement or lease under which you occupy the premises, and recover damages and court costs.

Date: Sept. 25, 20xx Leo Landlord  
Owner/Manager

## Proof of Service

I, the undersigned, being at least 18 years of age, served this notice, of which this is a true copy, on \_\_\_\_\_, \_\_\_\_\_, one of the occupants listed above as follows:

- ☐ On \_\_\_\_\_, \_\_\_\_\_, I delivered the notice to the occupant personally.
- ☐ On \_\_\_\_\_, \_\_\_\_\_, I delivered the notice to a person of suitable age and discretion at the occupant's residence/business after having attempted personal service at the occupant's residence, and business, if known. On \_\_\_\_\_, \_\_\_\_\_, I mailed a second copy to the occupant at his or her residence.
- ☐ On \_\_\_\_\_, \_\_\_\_\_, I posted the notice in a conspicuous place on the property, after having attempted personal service at the occupant's residence, and business, if known, and after having been unable to find there a person of suitable age and discretion. On \_\_\_\_\_, \_\_\_\_\_, I mailed a second copy to the occupant at the property.

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

Date: \_\_\_\_\_ Signature \_\_\_\_\_

**Three-Day Notice to Perform Covenant or Quit**

To: Lester Lessee  
(name)

Tenant(s) in possession of the premises at 123 Main Street, Apartment 4  
(street address)

City of San Jose, County of Santa Clara, California.

YOU ARE HEREBY NOTIFIED that you are in violation of the lease or rental agreement under which you occupy these premises because you have violated the covenant to:

refrain from keeping a pet on the premises  
\_\_\_\_\_  
\_\_\_\_\_

in the following manner:

by having a dog and two cats on premises  
\_\_\_\_\_  
\_\_\_\_\_

YOU ARE HEREBY REQUIRED within THREE (3) DAYS from the date of service on you of this notice to remedy the violation and perform the covenant or to vacate and surrender possession of the premises.

If you fail to do so, legal proceedings will be instituted against you to recover possession of the premises, declare the forfeiture of the rental agreement or lease under which you occupy the premises, and recover damages and court costs.

Date: November 6, 20xx Linda Landlord  
Owner/Manager

**Proof of Service**

I, the undersigned, being at least 18 years of age, served this notice, of which this is a true copy, on \_\_\_\_\_, one of the occupants listed above as follows:

- ☐ On \_\_\_\_\_, I delivered the notice to the occupant personally.
- ☐ On \_\_\_\_\_, I delivered the notice to a person of suitable age and discretion at the occupant's residence/business after having attempted personal service at the occupant's residence, and business, if known. On \_\_\_\_\_, I mailed a second copy to the occupant at his or her residence.
- ☐ On \_\_\_\_\_, I posted the notice in a conspicuous place on the property, after having attempted personal service at the occupant's residence, and business, if known, and after having been unable to find there a person of suitable age and discretion. On \_\_\_\_\_, I mailed a second copy to the occupant at the property.

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

Date: \_\_\_\_\_ Signature \_\_\_\_\_



Some rent control cities (for example, Berkeley, East Palo Alto, and Hayward) require that the tenant be given a written notice directing her to stop damaging the property and pay the estimated cost of repairs before you can evict using this ground. This requirement can be satisfied by either a Three-Day Notice to Perform Covenant or Quit, or a “cease and desist” notice followed by a Three-Day Notice to Quit.

4. The tenant is using the property for an illegal purpose (running a house of prostitution, dealing drugs, or operating a legitimate business clearly in violation of local zoning laws). You probably can't evict for minor transgressions such as smoking marijuana on the premises. It is unclear just how serious illegal activity must be to justify eviction; there are very few court decisions dealing with this question.

Because local police—or at least health department employees—may be interested in the tenant's illegal conduct, make sure to make appropriate complaints to them first. Keep a record of the dates and times of your complaints, and the name(s) of the person(s) with whom you spoke. And, although not required by ordinance, your record of having given the tenant written notice to cease the illegal activity should also help establish that there's a problem.



No rent control ordinance requires the tenant be given a chance to correct illegal use of property. Some cities, however, allow eviction on this ground only if the tenant is convicted of illegal activity. (See Appendix 1.)

The notice must contain:

- The tenant's name. List the names of all adult occupants of the premises, even if they didn't sign the original lease or rental agreement.
- The property's address.
- A specific statement as to how and approximately when the tenant violated the rental agreement or lease in a way that can't be corrected—for example, if the tenant illegally sublet, created a nuisance, damaged the premises, or illegally used the premises. This is the most important part of the notice, and must be drafted very carefully to clearly tell the tenant what she is doing wrong. Failure to be very specific regarding dates, times,

and conduct could render the notice void—another reason why a 30-day or 60-day eviction or, at least, a conditional three-day notice is usually preferable.



Again, many rent control ordinances that provide for just cause for eviction require that the reason to use an unconditional three-day notice be stated even more specifically than is required under state law. Check your ordinance.

- A demand that the tenant leave the premises within three days.
- An unequivocal statement that the lease is forfeited and that you will take legal action to remove the tenant if she fails to vacate within three days.
- The date and your (or your manager's) signature.

Two sample unconditional Three-Day Notices to Quit appear below. The instructions for completing the Proof of Service are the same as those described under the Three-Day Notice to Pay Rent or Quit. (See Chapter 2.)



A blank, tear-out version of the Three-Day Notice to Quit is in Appendix 3. The CD-ROM also includes this form. Instructions for using the CD are in Appendix 2.

## Serving the Three-Day Notice (Either Type)

A three-day notice telling a tenant to either comply with a lease provision or vacate can be served any day the tenant is in violation of the lease, but not before. For example, if your tenant informs you of his intent to move in a pet Doberman in violation of the “no pets” clause in the lease, you can serve him with a conditional three-day notice only as soon as he gets the dog. You can't get the jump on him by anticipating the violation. The same is true of an unconditional Three-Day Notice to Quit. You can serve the notice any time after the tenant has illegally sublet, caused a nuisance, severely damaged the property, or used the property for an illegal purpose.

## When to Serve Notice

What happens if you've accepted rent for a whole month and then want to give your tenant a three-day notice? Should you wait awhile? Here are some general

rules about when to serve your tenants with three-day notices:

- Serve a conditional notice right after you receive the rent. That way, you won't be out the rent during the first month the eviction lawsuit is pending. It's perfectly reasonable to accept the rent for the month and then demand, for example, that the tenant get rid of her pet, anticipating that she will comply.
- Serve an unconditional notice as close as possible to the end of a rental period. If you serve the notice right after you've collected the rent in advance for a whole month, the tenant may claim that by accepting the rent (assuming you knew about the problem) you gave up your right to complain. However, if you can prove that you became aware of a noncorrectable violation only a few days after having accepted rent, don't worry. If you get the tenant out within the month for which the tenant has already paid rent, the tenant does not get a refund for the days he paid for but didn't get to stay. By breaching the lease or rental agreement, the tenant forfeited his right to occupy the premises, even though he'd already paid the rent.
- Never give a tenant an unconditional Three-Day Notice to Quit concurrently with a Three-Day Notice to Pay Rent or Quit. The two are contradictory, one telling the tenant he can stay if he pays the rent, the other telling the tenant to move no matter what. Also, do not give the tenant an unconditional Three-Day Notice to Quit along with a 30-day or 60-day Notice of Termination of Tenancy. These two are contradictory as well, giving two different time periods within which the tenant must leave unconditionally.

## Who Should Serve the Three-Day Notice

As with a Three-Day Notice to Pay Rent or Quit, anyone over 18 can serve the notice, including you. (See Chapter 2.)

## Whom to Serve

As with other three-day notices, you should try to serve a copy of the notice on each tenant to whom you originally rented the property. (See Chapter 2.)

## How to Serve the Notice

The three-day notice must be served in one of three ways:

- personal service on the tenant
- substituted service and mailing, or
- posting-and-mailing.

You may not serve the notice by certified mail, which may be used only for 30-day or 60-day notices terminating month-to-month tenancies. Chapter 2 explains how to accomplish service.

## Accepting Rent After the Notice Is Served

With conditional three-day notices, don't accept any rent unless the tenant has cured the violation within three days—in which case you can't evict, and the tenant can stay. If the tenant doesn't correct the violation within three days, don't accept any rent unless you want to forget about evicting for the reason stated in the notice.

Don't accept rent after you've served an unconditional three-day notice unless you want to forget about the eviction. Acceptance of the rent will be considered a legal admission that you decided to forgive the violation and go on collecting rent rather than complain about the problem.

**EXAMPLE:** You collected a month's rent from Peter on March 1. On March 15, Peter threw an extremely boisterous and loud party that lasted until 3 a.m. Despite your warnings the next day, he threw an identical one that night. He did the same on the weekend of March 22-23. You served him an unconditional Three-Day Notice to Quit on the 25th of the month, but he didn't leave and you therefore have to bring suit. The rent for March is already paid, but you can't accept rent for April or you'll give up your legal right to evict on the basis of the March parties. However, you can get a court judgment for the equivalent of this rent in the form of "damages" equal to one day's rent for each day from April 1 until Peter leaves or you get a judgment.

**Three-Day Notice to Quit**

(Improper Subletting, Nuisance, Waste, or Illegal Use)

To: Ronald Rockland  
(name)Tenant(s) in possession of the premises at 1234 Diego Street, Apartment 5  
(street address)City of San Diego, County of San Diego, California.

YOU ARE HEREBY NOTIFIED that you are required within THREE (3) DAYS from the date of service on you of this notice to vacate and surrender possession of the premises because you have committed the following nuisance, waste, unlawful use, or unlawful subletting:

You committed a nuisance on the premises by reason of loud boisterous parties at which music was  
played at an extremely loud volume, and at which intoxicated guests milled about outside the front  
door to the premises and shouted obscenities at passersby every night from February 26th through  
28th, 20xx.

As a result of your having committed the foregoing act(s), the lease or rental agreement under which you occupy these premises is terminated. If you fail to vacate and surrender possession of the premises within three days, legal proceedings will be instituted against you to recover possession of the premises, damages, and court costs.

Date: March 1, 20xx Laura Landford  
Owner/Manager

**Proof of Service**

I, the undersigned, being at least 18 years of age, served this notice, of which this is a true copy, on \_\_\_\_\_,  
\_\_\_\_\_, one of the occupants listed above as follows:

- ☐ On \_\_\_\_\_, \_\_\_\_\_, I delivered the notice to the occupant personally.
- ☐ On \_\_\_\_\_, \_\_\_\_\_, I delivered the notice to a person of suitable age and discretion at the occupant's residence/business after having attempted personal service at the occupant's residence, and business, if known. On \_\_\_\_\_, \_\_\_\_\_, I mailed a second copy to the occupant at his or her residence.
- ☐ On \_\_\_\_\_, \_\_\_\_\_, I posted the notice in a conspicuous place on the property, after having attempted personal service at the occupant's residence, and business, if known, and after having been unable to find there a person of suitable age and discretion. On \_\_\_\_\_, \_\_\_\_\_, I mailed a second copy to the occupant at the property.

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

Date: \_\_\_\_\_  
Signature

**Three-Day Notice to Quit**

(Improper Subletting, Nuisance, Waste, or Illegal Use)

To: Leslie D. Lessee  
(name)Tenant(s) in possession of the premises at 2468 Alameda Street  
(street address)City of San Jose, County of Santa Clara, California.

YOU ARE HEREBY NOTIFIED that you are required within THREE (3) DAYS from the date of service on you of this notice to vacate and surrender possession of the premises because you have committed the following nuisance, waste, unlawful use, or unlawful subletting:

You have unlawfully sublet a portion of the premises to another person who now lives on the premises  
with you, contrary to the provisions of your lease.

As a result of your having committed the foregoing act(s), the lease or rental agreement under which you occupy these premises is terminated. If you fail to vacate and surrender possession of the premises within three days, legal proceedings will be instituted against you to recover possession of the premises, damages, and court costs.

Date: March 3, 20xx Mel Manager  
Owner/Manager

**Proof of Service**

I, the undersigned, being at least 18 years of age, served this notice, of which this is a true copy, on \_\_\_\_\_,  
\_\_\_\_\_, one of the occupants listed above as follows:

- ☐ On \_\_\_\_\_, I delivered the notice to the occupant personally.
- ☐ On \_\_\_\_\_, I delivered the notice to a person of suitable age and discretion at the occupant's residence/business after having attempted personal service at the occupant's residence, and business, if known. On \_\_\_\_\_, I mailed a second copy to the occupant at his or her residence.
- ☐ On \_\_\_\_\_, I posted the notice in a conspicuous place on the property, after having attempted personal service at the occupant's residence, and business, if known, and after having been unable to find there a person of suitable age and discretion. On \_\_\_\_\_, I mailed a second copy to the occupant at the property.

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

Date: \_\_\_\_\_  
Signature

## When to File Your Lawsuit

Once you have properly served the notice you will need to wait for the appropriate number of days to pass before you take the next step, filing your lawsuit. Here is how to compute this period:

- If you serve more than one tenant with notices, but not all on the same day, start counting only after the last tenant is served.
- Do not count the day of service as the first day. The first day to count is the day after service of the notice was completed.
- Do not file your lawsuit on the third day after service is complete. The tenant must have three full days after service before you file suit.
- If the third day is a business day, you may file your lawsuit on the next business day after that.
- If the third day falls on a Saturday, Sunday, or legal holiday, the tenant has until the end of the next business day to correct the violation (if the notice was conditional) or move. You cannot file your suit on that business day, but must wait until the day after that.

**EXAMPLE:** On November 11, Manuel personally served Maria with a conditional three-day notice at home. The first day after service is Friday the 12th, the second day is Saturday the 13th, and the third day is Sunday the 14th. Since the third day falls on a Sunday, Maria has until the end of the next business day—Monday the 15th—to correct the lease violation or leave. Only on the 16th can Manuel file suit.

Once you have waited the requisite period, and the tenant has failed to leave (or correct the violation if your notice was conditional), you can proceed to the next phase, which is filing an eviction complaint. We tell you how to do this in Chapter 6. ■



## Eviction Without a Three-Day or Other Termination Notice

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**T**here are just two situations in which you may file an eviction lawsuit against a tenant without first giving a written three-day, 30-day, or 60-day notice. They are:

- when the tenant refuses to leave after a fixed-term lease expires, and you haven't renewed it or converted it into a month-to-month tenancy by accepting rent after expiration of the lease term, and
- when your month-to-month tenant terminates the tenancy by giving you a 30-day notice, but then refuses to move out as promised.



Rent control ordinances requiring just cause for eviction in many cities limit evictions or add requirements for eviction. Be sure to check the Rent Control Chart in Appendix 1 and a copy of your city's rent control ordinance if your property is subject to rent control.

## Lease Expiration

Unlike a month-to-month tenancy, a fixed-term tenancy ends on a definite date, stated in the lease. No further notice is necessary. However, unless you are careful you may find yourself inadvertently renewing the lease or converting it into a month-to-month tenancy. Here are the basic rules:

- If you simply continue to accept monthly rent after the termination date, the fixed-term tenancy is automatically converted to a month-to-month tenancy. (Civ. Code § 1945.) It must be terminated with a 30-day or 60-day notice. (See Chapter 3.)
- If the lease has a renewal provision, your acceptance of rent may automatically operate to renew the lease for another full term.

**EXAMPLE:** Masao rented his house to Yuko under a six-month lease for January 1 through June 30. Although Masao assumed Yuko would leave on June 30, Yuko is still there the next day. When she offers Masao the rent on July 1, Masao accepts it, believing this is preferable to filing an eviction lawsuit, but tells Yuko she can stay only a month more. At the end of July, however, Yuko's lawyer tells Masao that Yuko is entitled to stay under her now month-to-month tenancy until and unless Masao terminates it with a proper 30-day notice. Masao gives Yuko a written 30-day notice on July 31, which means Yuko doesn't have to move until August 30.

In this example, Masao could have given Yuko a one-month extension without turning the tenancy into one from month to month. He need only have insisted that Yuko, as a condition of staying the extra month, sign a lease for a fixed term of one month, beginning on July 1 and ending on July 31.

## Reminding the Tenant Before the Lease Expires

To avoid an inadvertent extension of the lease or its conversion into a month-to-month tenancy, it is always a good idea to inform a fixed-term tenant, in writing and well in advance, that you don't intend to renew the lease. While not required, such a notice will prevent a tenant from claiming that a verbal extension was granted. A fixed-term tenant who knows a month or two in advance that you want her out at the end of a lease term is obviously in a good position to leave on time. A tenant who realizes that the lease is up only when you refuse her rent and demand that she leave immediately is not. Your letter might look something like this.

## Notice to Tenant That Lease Will Not Be Renewed

November 3, 20xx  
950 Parker Street  
Berkeley, CA 94710

Leo D. Leaseholder  
123 Main Street, Apt. #4  
Oakland, CA 94567

Dear Mr. Leaseholder:

As you know, the lease you and I entered into on January 1 of this year for the rental of the premises at 123 Main Street, Apartment 4, Oakland, is due to expire on December 31, slightly less than two months from now.

I have decided not to extend the lease for any period of time, even on a month-to-month basis. Accordingly, I will expect you and your family to vacate the premises on or before December 31. You have the right to request an initial move-out inspection, and to be present at that inspection, provided you request it no more than two weeks prior to your move-out date. I will return your security deposit to you in the manner prescribed by Section 1950.5 of the California Civil Code, within three weeks after you move out. If I deduct you also have the right to receive copies of invoices or receipts for work needed to remedy damage beyond normal wear and tear or to perform necessary cleaning.

Sincerely,  
*Lenny D. Landlord*  
Lenny D. Landlord

The letter isn't a legally required notice, but is just sent to show your intent to assert your right to possession of the property at the expiration of the lease. (However, the part of the letter telling the tenant of her right to an initial move-out inspection and to be present at it is legally required, as is the part concerning the tenant's right to invoices and receipts. See *The California Landlord's Law Book: Rights and Responsibilities*, Chapters 5 and 18.) It doesn't have to be served in any particular way. It can be mailed first class. However, if you're afraid the tenant will claim she never received the letter, you may want to send it certified mail, return receipt requested.

## Is the Tenancy for a Fixed Term?

If you want to evict a tenant who stays after her lease expires, the first question to ask yourself is whether or not the tenant actually did have a lease—or, more accurately, a fixed-term tenancy. Since the titles of standard rental forms are often misleading (a rental agreement may be called a “lease” or vice versa), you should look at the substantive provisions of the document if you are in doubt. (We discuss this in detail in *Volume 1*, Chapter 2.)

To summarize, if the agreement lists either a specific expiration date or the total amount of rent to be collected over the term, chances are it's a lease. For example, a clearly written lease might use this language:

The term of this rental shall begin on \_\_\_\_\_, 20\_\_\_\_, and shall continue for a period of \_\_\_\_\_ months, expiring on \_\_\_\_\_, 20\_\_\_\_.

As discussed above, the big exception to the rule that no notice is required to end a fixed-term tenancy is when you have, by word or action, allowed the lease to be renewed, either for another full term (if there's a clause to that effect in the lease) or as a month-to-month tenancy (if you continued to accept monthly rent after the end of the term).

## Must You Have a Reason for Not Renewing a Lease?

A landlord's reason for refusing to renew a lease is treated the same way as is a landlord's reason for terminating a month-to-month tenancy with a 30-day or 60-day notice. (See Chapter 3.) The general rule is that (except in certain cities with rent control) you don't have to give a reason for refusing to renew the lease. (If you're in a rent control city that requires just cause for eviction, read Chapter 3.) However, your refusal may not be based on retaliatory or discriminatory motives. Laws against illegal discrimination apply to nonrenewal of fixed-term tenancies to the same extent that they apply to termination of month-to-month tenancies.



In rent control cities with just cause ordinances, expiration of a fixed-term lease is generally not a basis for eviction, unless the tenant refuses to sign a new one on essentially the same terms and conditions. Most

ordinances don't require you to give the tenant any specific kind of notice, although San Francisco, Thousand Oaks, and West Hollywood require that the tenant be requested in writing to sign the new lease. (See Appendix 1.)

The best practice is to personally hand the tenant a letter, at least 30 days before the lease expires, requesting that she sign the new lease (attached to the letter) and return it to you before the current one expires. Be sure to keep a copy of the letter and proposed new lease for your own records. Even if all this isn't required by your city, it will make for convincing documentation if the tenant refuses to sign and you choose to evict for this reason.

## How to Proceed

You may begin an unlawful detainer suit immediately if all of the following are true:

- You conclude that your tenant's fixed-term tenancy has expired.
- You have not accepted rent for any period beyond the expiration date.
- The tenant refuses to move.

Instructions on how to begin the suit are set out in Chapter 6.

## Termination by the Tenant

You can also evict a tenant without written notice when the tenant terminates a month-to-month tenancy by serving you with a legally valid 30-day notice but refuses to leave after the 30 days. (As we saw in Chapter 3, although you must give 60 days' notice of termination of tenancy to a tenant who has lived in the premises a year or more, he or she need only give you 30 days' notice.) Again, if you accept rent for a period after the time the tenant is supposed to leave, you've recreated the tenancy on a month-to-month basis and cannot use this chapter.

If only one of several cotenants (see *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 10) terminates the tenancy, the others may stay unless the tenant who signed the notice was acting on their behalf as well.

Because the tenant's notice may be unclear in this respect or may be invalid for other reasons (such as failure to give a full 30 days' notice), some landlords follow a tenant's questionable termination notice with a definite 30-day notice of their own. This avoids the problem of relying on a tenant's notice, rerenting the property and then finding, after the tenant has changed her mind and decided to stay, that the notice is not legally sufficient to terminate the tenancy. However, this technique is no longer possible if the tenant has stayed a year or more, in which case a 60-day notice is required.

If you choose not to serve your own 30-day or 60-day notice and instead want to evict on the basis that the tenant has not vacated in accordance with her 30-day notice, proceed to Chapter 6 for how to file an unlawful detainer complaint. If you do decide to serve a 30-day or 60-day notice of your own, turn to Chapter 3.

## Checklist for Uncontested "No-Notice" Eviction

Here are the steps required in this type of eviction, assuming the tenant does not answer your unlawful detainer complaint (that is, the tenant defaults). At this point, much of the outline may not make sense to you, as you have not yet read the chapters on filing the unlawful detainer complaint, taking a default judgment, or enforcing the judgment. As you proceed through those chapters (or Chapter 8, if the tenant contests your action), you may want to return to this chapter to keep in touch as to where you are in the process.

Checklist for Uncontested “No-Notice” Eviction		
Step		Earliest Time to Do It
<input type="checkbox"/> 1.	Prepare the Summons(es) and Complaint and make copies. (Chapter 6)	When it's apparent the tenant(s) won't leave on time; don't sign and date it until the day indicated below in Step 3.
<input type="checkbox"/> 2.	File the Complaint at the courthouse and have the Summons(es) issued. (Chapter 6)	The first day after the lease term or tenant's notice period expires.
<input type="checkbox"/> 3.	Have the sheriff, the marshal, or a friend serve the Summons and Complaint. (Chapter 6)	As soon as possible after filing the Complaint and having the Summons(es) issued.
<input type="checkbox"/> 4.	Prepare Request for Entry of Default, Judgment, Declaration, and Writ of Possession. (Chapter 7)	While you're waiting for five-day (or 15-day, if Complaint not personally served) response time to pass.
<input type="checkbox"/> 5.	Call the court to find out whether or not tenant(s) has filed written response.	Just before closing on the fifth day after service of Summons, or early on the sixth day. (Do not count holidays that fall on weekdays, however. Also, if fifth day after service falls on weekend or holiday, count the first business day after that as the fifth day.)
<input type="checkbox"/> 6.	Mail copy of Request for Entry of Default to tenant(s), file original at courthouse. Also file Declaration and have clerk issue judgment and writ for possession of the property. (Chapter 7)	Sixth day after service of Summons and Complaint. (Again, count first business day after fifth day that falls on weekend or holiday.)
<input type="checkbox"/> 7.	Prepare letter of instruction for, and give writ and copies to, sheriff or marshal. (Chapter 7)	Sixth day after service of Summons and Complaint. (Again, count first business day after fifth day that falls on weekend or holiday.)
<input type="checkbox"/> 8.	Change locks.	As soon as tenant vacates.
<b>For Money Judgment</b>		
<input type="checkbox"/> 9.	Prepare Request for Entry of Default, Judgment, and, if allowed by local rule, Declaration in Lieu of Testimony. (Chapter 7)	As soon as possible after property is vacant.
<input type="checkbox"/> 10.	Mail Request for Entry of Default copy to tenant, file request at courthouse. If Declaration in Lieu of Testimony allowed, file that, too, and give clerk judgment and writ forms for money part of judgment. If testimony required, ask clerk for default hearing. (Chapter 7)	As soon as possible after above.
<input type="checkbox"/> 11.	If testimony required, attend default hearing before judge, testify, and turn in your judgment form for entry of money judgment. (Chapter 7)	When scheduled by court clerk.
<input type="checkbox"/> 12.	Apply security deposit to cleaning and repair of property, and to any rent not accounted for in judgment, then apply balance to judgment amount. Notify tenant in writing of deductions, keeping a copy. Refund any balance remaining. If deposit does not cover entire judgment, attempt to collect balance of judgment. (Chapter 9)	As soon as possible after default hearing. Deposit must be accounted for within three weeks of when the tenants vacate.



# Filing and Serving Your Unlawful Detainer Complaint

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**A**fter you have legally terminated your tenant's tenancy by properly serving the appropriate termination notice (or the tenancy has ended because a lease expired or the tenant terminated it himself), you can begin an unlawful detainer lawsuit to evict the tenant. This chapter tells you how to prepare and file a Complaint and Summons, the documents that initiate your lawsuit.

## How to Use This Chapter

The reason you're evicting (nonpayment of rent, for example) and the kind of notice you use to terminate the tenancy (Three-Day Notice to Pay Rent or Quit, for example) determine the actual wording of your unlawful detainer Complaint. To keep you from getting confused, we label the parts of our discussion that apply to each type of eviction.

As you go through the instructions on how to fill out the Complaint, simply look for the number of your "home" chapter (the one you used to prepare the termination notice) and start reading. You needn't pay any attention to the material following the other symbols.

### Key to Symbols in This Chapter



Evictions based on nonpayment of rent—Three-Day Notice to Pay Rent or Quit (Chapter 2)



Evictions based on a 30-day or 60-day notice (Chapter 3)



Evictions based on lease violations, damage, or nuisance—Three-Day Notice to Quit or Three-Day Notice to Perform Covenant or Quit (Chapter 4)



Evictions based on termination of tenancy without notice (Chapter 5).

If a paragraph is relevant only to certain types of evictions, only the appropriate symbols will appear. In addition, we occasionally refer you to the chapter you started with (for example, Chapter 2 for evictions based on nonpayment of rent). We also alert you to the special requirements of rent control ordinances.

Okay, let's start.

## When to File Your Unlawful Detainer Complaint



If you terminated the tenancy with a three-day, 30-day, or 60-day notice, you can file your unlawful detainer Complaint when the notice period expires. You must be careful not to file prematurely. If you file before the notice period is over, there is no basis for the suit because the tenancy was never properly terminated, and if the tenant files a written response to your lawsuit, you will lose.

It is therefore very important to correctly calculate the length of the notice period. We explained how to do this in the chapter you started out in (for example, Chapter 2 for evictions based on nonpayment of rent, Chapter 3 for evictions based on a 30-day notice). If necessary, go back to the chapter covering your type of eviction and review how to determine when the notice period ends. Then return here for instructions on how to fill in and file your unlawful detainer Complaint.



If, as discussed in Chapter 5, the tenancy has already ended without a three-, 30-, or 60-day notice, that is, if a lease has expired or the tenant terminated the tenancy with a proper notice to you, you may file your Complaint at any time.

## Where to File Suit

Until recently, California had two levels of civil trial courts: Municipal Courts, which heard cases involving less than \$25,000, and Superior Courts, which handled cases over that amount. Because all residential evictions for nonpayment of rent involved much less than \$25,000, they were heard in Municipal Court.

In November 1998, the voters amended the California Constitution to allow each county to abolish its Municipal Courts and consolidate them with the Superior Courts. All California counties have done so. Now, there are no more "Municipal" courts, only Superior Courts and their various "branches" or "divisions," some of which were formerly Municipal Courts. (Because this change is relatively new, some branches and divisions continue to have "Municipal Court" building signs and telephone listings.)



## Court Locations

Most large counties divide their Superior Courts into “divisions” or “branches.” (A notable exception is San Francisco, whose Superior Court has no divisions or branches.)

All California courts have Internet websites. You can reach them by going to a central website: [www.courtinfo.ca.gov/courts/trial](http://www.courtinfo.ca.gov/courts/trial). Once you get to this main website, you’ll see links to the superior courts.

File your lawsuit in the division or district where the property is located. To make sure you have the right court (some handle only criminal matters), call the civil clerk of the superior court for the division or district in which you think your rental property is located. You can also find the court’s address and phone number in the telephone book under “courts” or “superior court.”

## Other Courts

In the past, unlawful detainer lawsuits were sometimes filed in small claims courts and justice courts. This is no longer true. Small claims courts do not hear eviction cases. (C.C.P. § 116.220.) In November 1994, the State Constitution was amended to rename justice courts as municipal courts (Const. Art. VI, § 5), all of which are also now Superior Courts.

## Preparing the Summons

The first legal form that you’ll need to start your lawsuit is the Summons. The Summons is a message from the court to each defendant (person being sued). It states that you have filed a Complaint (see “Preparing the Complaint,” below) against the defendant, and that if there is no written response to the Complaint within five days, the court may grant you judgment for eviction and money damages.



A blank, tear-out version of the Summons and Proof of Service is in Appendix 3. The CD-ROM also includes this form. Instructions for using the CD are in Appendix 2.

If you photocopy the tear-out form in Appendix 3 and use both sides of the paper, or make a double-sided print from the CD-ROM, be sure that the front and back are in the same upside down relation to each

other as is the form in the back of this book. The form is filled out in the same way no matter what the ground for the eviction you are using. Using a typewriter, fill it out as follows:

### Step 1: “NOTICE TO DEFENDANT \_\_\_\_\_.”

You should name as defendants the following individuals:

- All adults who live in the property, whether or not you made any agreement with them; and
- Any tenants who entered into the original rental agreement and have since sublet the property. (Such tenants are still legally in possession of the property through their subtenants.) If none of the original tenants is there, however, the current tenants are probably “assignees,” not subtenants, and you shouldn’t name the original tenants as defendants. (See *The California Landlord’s Law Book: Rights & Responsibilities*, Chapter 10, for more discussion of the subtenant/assignee distinction.)

It is not enough to name the person you think of as the “main” tenant. For example, if a husband and wife reside on the property and are listed as tenants in your lease, and the wife’s brother also lives there, you must list all three as defendants. The sheriff or marshal will not evict any occupant not named as defendant who claims to have moved in before you filed suit. You may then have to go back to court to evict the person you forgot to sue. (Meanwhile, this person will be free to invite the evicted tenants back as “guests.”)

Also, below the defendants’ names, type “DOES 1 to 5.” This phrase indicates that you are also naming unknown defendants in your lawsuit, just in case you later find out that there are unauthorized occupants living on the premises in addition to the known tenants. We discuss this in more detail in “Preparing the Complaint,” Item 5.

### Step 2: “YOU ARE BEING SUED BY PLAINTIFF \_\_\_\_\_.”

Type in the name of the plaintiff, or person suing. Here are the rules to figure out who this should be:

1. If you are the sole owner of the property, you must be listed as plaintiff (but see rule (4), below).
2. If there are several owners, they don’t all have to be listed—the co-owner who rented to the tenant,

or who primarily deals with the manager, if there is one, should be listed.

3. The plaintiff must be an owner of the property (such as your spouse) or have some ownership interest, such as a lease-option. A nonowner manager or property management firm cannot be a plaintiff. (See C.C.P. § 367.) Some property managers and management companies have successfully brought unlawful detainer actions in their own behalf, without being called on it by a judge. Still, a competent tenant's attorney may raise this issue on occasion and win, perhaps even getting a judgment against the manager or management company for court costs and attorney's fees.
4. If the lease or rental agreement lists a fictitious business name (for example, "Pine Street Apartments") as the landlord, you cannot sue (either under that name or under your own name) unless the business name is registered with the county. (See Bus. & Prof. Code § 17910 and following.) If the name is registered, list it as the plaintiff if the property is owned by a partnership. If you own the property alone but use the business name, put your name followed by "dba Pine Street Apartments." (The dba means "doing business as.") If the name isn't registered, go down to the courthouse and get the process started. This involves filling out a form, paying a fee, and arranging to have the name published.

**EXAMPLE:** Jack Johnson and Jill Smith, a partnership named "Jack & Jill Partnership," own a five-unit apartment building they call "Whispering Elms." Their rental agreements list Whispering Elms as the landlord, and the name is properly registered with the county as a fictitious business name. They should enter "Jack Johnson and Jill Smith, a partnership, dba Whispering Elms" as the plaintiff.

**EXAMPLE:** Jill Smith owns the building herself, but her rental agreements list Whispering Elms as the landlord, and the name is on file with the county. The plaintiff in her eviction suit should be "Jill Smith, dba Whispering Elms."

5. If a corporation is the owner of the property, the corporation itself must be named as plaintiff and represented by an attorney. Even if you're president and sole shareholder of a corporation that owns the property, unless you're a lawyer you cannot represent the corporation in court. (Although C.C.P. § 87 seems to allow this, this statute was declared unconstitutional in *Merco Construction Engineers, Inc. v. Municipal Court* (1978) 21 Cal. 3d 724, 147 Cal. Rptr. 631.)

### Step 3: (item 1 on the form)

**"The name and address of the court is \_\_\_\_\_."**

Put the name and street address of the court, "SUPERIOR COURT OF CALIFORNIA," the county, and the division or branch in which your rental property is located. (See above.)

**EXAMPLE:** Your property is located in the City of Oakland, in Alameda County. Oakland is in the "Oakland-Piedmont-Emerlyville" division, whose Superior Court is located at 600 Washington Street, Oakland. You should type in:

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA  
OAKLAND-PIEDMONT-EMERYVILLE DIVISION  
600 Washington Street  
Oakland, CA 94607

### Step 4: "CASE NUMBER \_\_\_\_\_."

Leave this space blank. The court clerk will fill in the case number when you file your papers.

### Step 5: (item 2)

**"The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is \_\_\_\_\_."**

Place your name and mailing address along with a telephone number at which you can be reached.

Since your tenant will receive a copy of the Summons, he will see this address (to which the tenant must mail a copy of any written response) and telephone number. You may prefer to list a business address or post office box and/or a business telephone number.

SUM-130

**SUMMONS**  
**(CITACION JUDICIAL)**

**UNLAWFUL DETAINER—EVICTION**

**(RETENCIÓN ILÍCITA DE UN INMUEBLE—DESALOJO)**

**NOTICE TO DEFENDANT:** TERRANCE D. TENANT,  
**(AVISO AL DEMANDADO):** TILLIE D. TENANT, and  
DOES 1 through 5

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
LENNY D. LANDLORD

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

You have 5 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays. If the last day falls on a Saturday, Sunday, or a court holiday then you have the next court day to file a written response.) A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. (Para calcular los cinco días, cuente los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito). Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

- The name and address of the court is:  
(El nombre y dirección de la corte es): SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF LOS ANGELES,  
110 N. Grand Avenue, Los Angeles, CA 90012
- The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
LENNY D. LANDLORD, 12345 Angeleno St., Los Angeles, CA 90010. 213-555-6789

CASE NUMBER.  
(Número del caso):

- (Must be answered in all cases) An unlawful detainer assistant (Bus. & Prof. Code, §§ 6400–6415) ☒ did not ☐ did for compensation give advice or assistance with this form. (If plaintiff has received **any** help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

Date:  
(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

**4. NOTICE TO THE PERSON SERVED:** You are served

- ☒ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☐ as an occupant
- ☐ on behalf of (specify):  
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ CCP 415.46 (occupant) ☐ other (specify):

- ☐ by personal delivery on (date):

Page 1 of 2

SUM-130

PLAINTIFF (Name):	LENNY D. LANDLORD	CASE NUMBER:
DEFENDANT (Name):	TERRANCE D. TENANT, et al	

6. **Unlawful detainer assistant** (complete if plaintiff has received any help or advice for pay from an unlawful detainer assistant):

- a. Assistant's name:
- b. Telephone no.:
- c. Street address, city, and ZIP:
  
- d. County of registration:
- e. Registration no.:
- f. Registration expires on (date):

**Step 6: (item 3)**

**“An unlawful detainer assistant (B&P 6400-6415) ☐ did not ☐ did for compensation give advice or assistance with this form.”**

A nonattorney who is paid to fill out unlawful detainer paperwork must be registered and bonded. This law does not apply, however, to property owners or to managers who prepare such forms for their employer in the ordinary course of their duties (neither does it apply to attorneys). If you are such a property manager or owner, put an X next to the words “did not,” and leave Item 6, on the second page, blank (but complete the Caption, as explained below). If you are paying a paralegal or other person to fill out or otherwise process your papers (other than just having a process server serve them), or to advise you on filling out the forms, he or she must be registered with the county and bonded, and the “did” box must be checked. That person’s name, address, phone number, and registration information must then be listed on the next page of the Summons form. Provide the information requested, and fill out the box at the top of the page by entering the plaintiff’s and defendants’ names, as you did at the top of the summons. You will need to file both pages of the Summons, even if page 2 is blank except for the Caption (which will be the case for those who did not use an assistant).

**Step 7: (item 4)**

**“NOTICE TO THE PERSON SERVED: You are served...”**

This part of the Summons is for the process server to complete. The server needs to identify the defendant as an individual or as someone who represents a business entity. In residential eviction proceedings, the defendant will always be an individual, so we have gone ahead and preprinted the form with an X in Box 1. The process server will complete the rest of the form when he or she completes the service. (See below for more information on serving the Summons and completing this part of the form.)

**Step 8: Complete the Caption on Page Two.**

Enter the names of the plaintiff(s) and defendant(s), just as you did when filling out the top of the form on page one. Do so even if you won’t be filling out Item 6 on this page (see instructions for Step 9).

**Step 9: (Item 6)**

**If you used an unlawful detainer assistant, supply the information called for.**

Leave these items blank if you did not use an assistant.

**Preparing the Complaint**

In the unlawful detainer Complaint, you allege why the tenant should be evicted. The Complaint also formally requests a judgment for possession of the premises and any sums which you may be owed as back rent (in nonpayment of rent evictions), damages, court costs, and attorney fees. The original of your unlawful detainer Complaint is filed with the court. A copy is given to (served on) each defendant along with a copy of the Summons. (See below.) Together, filing and serving the Complaint and Summons initiate the lawsuit.

To fill out the Complaint correctly, you need to know whether or not your property is located in an area covered by rent control. To find this out, consult the list of rent control cities in the Rent Control Chart in Appendix 1. Many rent control ordinances that require just cause for eviction require that the Complaint (as well as the three-, or 30-, or 60-day notice) include a specific statement of reasons for the eviction. This requirement is satisfied by attaching a copy of the notice to the Complaint and by making an allegation (that is, checking a box; see Item 6c, below) in the Complaint that all statements in the notice are true. Some ordinances also require Complaints to allege compliance with the rent control ordinance. If you don’t comply with these requirements, the tenant can defend the unlawful detainer suit on that basis.

Although many of these specific rent control requirements are listed in Appendix 1, we can’t detail all the rent control ordinance subtleties, and we can’t guarantee that your ordinance hasn’t been changed since this book was printed. Therefore, it is absolutely essential that you have a current copy of your

ordinance and rent board regulations at the ready when you're planning an eviction in a rent control city.

As with the Summons, the unlawful detainer Complaint is completed by filling in a standard form, which is fairly straightforward. But don't let this lull you into a false sense of security. If you make even a seemingly minor mistake, such as forgetting to check a box, checking one you shouldn't, or filling in wrong or contradictory information, it will increase the chances that your tenant can and will successfully contest the action, costing you time and money. Pay very close attention to the following instructions. This chapter includes directions on filling in each item of the Complaint plus a completed sample form.



A blank, tear-out version of the Complaint is in Appendix 3. The CD-ROM also includes this form. Instructions for using the CD are in Appendix 2.

If you make a double-sided photocopy of the tear-out Complaint, or make a double-sided print using the CD-ROM, be sure that the copies you make have the front and back in the same seeming upside-down relation to one another as the forms in the back of this book, or a fussy court clerk may refuse to accept your papers for filing.



At the top of the form, type your name, address, and telephone number in the first box that says Attorney or Party Without Attorney. After the words "Attorney For," we have preprinted the form to say "Plaintiff in Pro Per," to indicate that you're representing yourself. In the second box, you will need to fill in the county, division, and court address, the same as you put on the front of the Summons. In the third box, fill in the plaintiff's (your) and defendants' names in capital letters. As with the Summons, leave blank the boxes entitled "FOR COURT USE ONLY" and "CASE NUMBER."

Put an X in the box next to the space labeled "DOES 1 to \_\_\_\_," and put "5" in the space after that. This allows you to name five more defendants later, if, for example, you find out the names of unauthorized occupants of the premises.

If you want to name more defendants later, you can amend (change) your Complaint and add the names of the new defendants in exchange for each of your

fictional "Doe" defendants.

Put an X in the two boxes next to the words "ACTION IS A LIMITED CIVIL CASE" and the words "does not exceed \$10,000." Do not check any other boxes in this area. This tells the clerk to charge you the lower filing fee (around \$140) for a case involving a relatively small amount of money. (If you don't check these boxes, or check the wrong ones, you could be charged up to \$275.)

### Item 1: PLAINTIFF and DEFENDANT Names



Type your name after the words "PLAINTIFF (names each):" and type the defendants' names after the words "DEFENDANT (names each):," using upper case for the first letter of each name and lower case for the remainder (Joe Smith).

### Item 2: Plaintiff Type



**Item 2a:** State whether the plaintiff is an individual, a public agency, a partnership, or a corporation. If, as in most cases, the plaintiff is an adult individual—you—who is an owner of the property, type an X in box (1) next to the words "an individual over the age of 18 years."

Do not check the box next to the words "a partnership" unless you listed the partnership as the plaintiff on the Summons. (See Step 2 in "Preparing the Summons," above.)

Do not check the box next to the words "a corporation." Corporate landlords must be represented by an attorney—in which case you should not be doing the eviction lawsuit yourself. (See above.)



**Item 2b:** Type an X in the box if you included a fictitious business name when you identified the plaintiff in the Summons (see Step 2 in "Preparing the Summons," above). Type the fictitious business name in the space provided.

### Item 3: Address of Rental Property



List the street address of the rental property, including apartment number if applicable, and the city and county in which it is located.

**EXAMPLE:** 123 Main Street, Apartment 4, San Jose, County of Santa Clara.

### Item 4: Plaintiff's Interest



If you are an owner of the property, type an X in the box next to the words “as owner.” If you have a lease-option on the property and rent it to the tenants, check the “other” box and type in “Lessor.”

### Item 5: Unknown Defendants



You don't need to do anything here. This allegation applies only if there are unauthorized subtenants or long-term “guests” in the property, but you don't know their names. If you later learn the real name of a “John Doe,” this allegation makes it easier for you to file an “amended” Complaint, giving the correct name(s). Filing an amended Complaint gets a bit tricky. If you need help, contact a lawyer to help you.

### Item 6: Landlord and Tenant's Agreement



**Item 6a:** This item calls for basic information about the terms of the tenancy.

On the first line (beginning with “On or about”), fill in the date on which you agreed to rent the property to your tenant. This is the date the agreement was made, not the date the tenant moved in. If a written lease or rental agreement is involved, the date should be somewhere on it. If it's an oral agreement and you can't remember the exact date, don't worry. The approximate date is okay.

It's very common for tenants with leases to stay beyond the lease expiration date, with the full knowledge and blessing of the landlord. When the landlord continues to accept rent, these tenants become month-

to-month tenants, subject to the same terms and conditions of the original lease. If the tenant you're evicting stayed on in this way, use the date that the original lease was signed. If you asked this tenant to sign a new lease when the old one expired (this is the better practice), use the date that the latest lease was signed, and refer to this lease for all other information that's called for in the Complaint.

Then, on the same line, fill in the names of the persons with whom you made the oral agreement or who signed a written agreement or lease. In the case of an oral agreement, list the name(s) of the person(s) with whom you or a manager or other agent originally dealt in renting the property. Don't worry if the list of people with whom the oral or written agreement was made does not include all the current adult occupants. Occupants who didn't make the original agreement are subtenants or assignees (see *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 10) and are accounted for in Item 6c (below).

If some of the original tenants have moved out, they should not be listed in Item 6a, since you are not permitted to name them as defendants. You list here only those person(s) who entered into the rental agreement *and* still live in the property.

The boxes after line “(1)” of Item 6a (beginning with the words “agreed to rent the premises as a”) indicate the type of tenancy you and your tenant(s) originally entered into.

- If the tenancy was from month to month (see Chapter 3) check that box.
- If the tenancy was not originally month to month, type an X in the “other tenancy” box.
- For a fixed-term tenancy, type “fixed-term tenancy for \_\_\_\_\_ months,” indicating the number of months the lease was to last.
- The “other tenancy” box can also be used to indicate periodic tenancies other than from month to month such as week-to-week tenancies.
- If the tenancy began for a fixed period (one year is common), but the term has expired and the tenancy is now month to month, indicate it as it originally was (fixed-term). You can note in Item 6d (see below) that the tenancy subsequently changed to month to month.

The boxes after line “(2)” in Item 6a (beginning with the words “agreed to pay rent of”) has a space for

FAX NO. (Optional):

**E-MAIL ADDRESS (Optional):**

ATTORNEY FOR (Name): Plaintiff in Pro Per

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF** **LOS ANGELES**  
STREET ADDRESS: 110 North Grand Avenue  
MAILING ADDRESS: same  
CITY AND ZIP CODE: Los Angeles, CA 90012  
BRANCH NAME: CENTRAL DISTRICT/DOWNTOWN BRANCH

PLAINTIFF: LENNY D. LANDLORD

DEFENDANT: TERRENCE D. TENANT, TILLIE D. TENANT

☒ DOES 1 TO 5

**COMPLAINT — UNLAWFUL DETAINER\***

CASE NUMBER:

☒ COMPLAINT    ☐ AMENDED COMPLAINT (*Amendment Number*): \_\_\_\_\_

**Jurisdiction (check all that apply):**

☒ ACTION IS A LIMITED CIVIL CASE

Amount demanded ☒ does not exceed \$10,000  
☐ exceeds \$10,000 but does not exceed \$25,000

☐ ACTION IS AN UNLIMITED CIVIL CASE (amount demanded exceeds \$25,000)

☐ ACTION IS RECLASSIFIED by this amended complaint or cross-complaint (check all that apply):

<input type="checkbox"/>	from unlawful detainer to general unlimited civil (possession not in issue)	<input type="checkbox"/>	from limited to unlimited
<input type="checkbox"/>	from unlawful detainer to general limited civil (possession not in issue)	<input type="checkbox"/>	from unlimited to limited

1. PLAINTIFF (name each): Lenny D. Landlord  
alleges causes of action against DEFENDANT (name each): Terrence D. Tenant, Tillie D. Tenant
2. a. Plaintiff is (1) ☒ an individual over the age of 18 years (4) ☐ a partnership.  
(2) ☐ a public agency. (5) ☐ a corporation.  
(3) ☐ other (specify):  
b. ☐ Plaintiff has complied with the fictitious business name laws and is doing business under the fictitious name of (specify):
3. Defendant named above is in possession of the premises located at (street address, apt. no., city, zip code, and county):  
6789 Angel Blvd. Apt. 10, Los Angeles, 90010, Los Angeles County
4. Plaintiff's interest in the premises is ☒ as owner ☐ other (specify):
5. The true names and capacities of defendants sued as Does are unknown to plaintiff.
6. a. On or about (date): Jan. 1, 2002 defendant (name each): Terrence D. Tenant, Tillie D. Tenant
- (1) agreed to rent the premises as a ☒ month-to-month tenancy ☐ other tenancy (specify):  
(2) agreed to pay rent of \$ 850.00 payable ☒ monthly ☐ other (specify frequency):  
(3) agreed to pay rent on the ☒ first of the month ☐ other day (specify):
- b. This ☒ written ☐ oral agreement was made with  
(1) ☒ plaintiff. (3) ☐ plaintiff's predecessor in interest.  
(2) ☐ plaintiff's agent. (4) ☐ other (specify):

\* **NOTE:** Do not use this form for evictions after sale (Code Civ. Proc., § 1161a)

Page 1 of 3

Form Approved for Optional Use  
Judicial Council of California  
UD-100 (Rev. July 1, 2005)

## COMPLAINT—UNLAWFUL DETAINER

Civil Code, § 1940 et seq.  
Code of Civil Procedure §§ 425.12, 1166  
[www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)

American LegalNet, Inc.  
www.USCourtForms.com



you to fill in the amount of the rent when the tenant originally rented the premises. If the rent has increased since then, say so in Item 6d (see below). Next indicate how often the rent was payable (again, when the tenancy began; changes since then should be indicated in Item 6d). In the rare cases where the rent was not payable monthly, put an X in the “other” box and type in the appropriate period (for example, weekly or bimonthly).

At line “(3)” of Item 6a, check “first of the month” if the rent was payable then. If it was payable on any other day (for example, on the 15th of each month, or every Monday), instead check the box next to “other day (specify):” and type in when the rent did come due.



**Item 6b:** This item tells whether the rental agreement or lease was oral or written and whether you, an agent, or a previous owner entered into it with the tenant. Check either the “written” box or the “oral” box on the first line. If there was a written agreement with the first tenants, but only an oral agreement with subsequent occupants, the latter are most likely subtenants under the written agreement. So you need only check the “written” box.

Also put an X in one of the four boxes below it. Check the box labeled “plaintiff” if you—the plaintiff—signed the written rental agreement or lease or made the oral agreement with the tenant. If a manager, agent, or other person did this, check the box labeled “plaintiff’s agent” instead. If the tenant was renting the property before you owned it, and you didn’t have her sign a new rental agreement or lease, she is there because of some sort of agreement with the previous owner—in legalese, your “predecessor in interest”—and you should check that box.



#### **PLAINTIFF and DEFENDANT.**

At the top of the reverse side of the Complaint is a large box labeled “PLAINTIFF (Name):” and “DEFENDANT (Name):” Here, type in capital letters the names of the first-listed plaintiff and defendant the same way their names are listed on the front Caption under “PLAINTIFF” and “DEFENDANT.” Where there are multiple plaintiffs or defendants, you

list only the first one here, followed by “ET AL.”



**Item 6c:** If the occupants you’re trying to evict are all named in Item 6a (because you entered into a written or oral rental agreement or lease with them), leave box c blank and go on to Item 6d.

If, however, some of the persons you named as defendants were not named in Item 6a (for example, adults who later moved in without your permission), check box c and one of the three boxes below it to indicate whether these defendants are “subtenants” (usually) or “assignees” (rarely). (See *The California Landlord’s Law Book: Rights & Responsibilities*, Chapter 10, for a discussion of these terms.)

Here’s a brief explanation.

**Subtenants.** If any of the original tenants listed in Item 6a still live in the premises with these defendants, check the “subtenants” box, because these people are essentially renting from the original tenants, not from you.

**EXAMPLE:** Larry rented to Tim and Twyla ten years ago. Tim and Twyla signed a month-to-month rental agreement that is still in effect (though Larry has increased the rent since then). Last year, Twyla moved out and Twinka moved in with Tim. Larry never had Twinka sign a new rental agreement.

What is the current status of Tim and Twinka? Tim is still renting from Larry under the old rental agreement, but Twinka is actually renting from Tim—even if she pays the rent to Larry herself. Twinka is a subtenant and should be listed under Item 6c. Tim and Twyla, the original tenants, are listed in Item 6a.

**Assignees.** On the other hand, if none of the original tenants lives on the premises and you don’t expect any of them to return, chances are that the current occupants are “assignees”—unless you had them sign or enter into a new rental agreement. An assignee is someone to whom the former tenants have, in effect, turned over all of their legal rights under the lease.

**EXAMPLE:** Lana rented one of her apartments to Toby and Toni five years ago. Three years ago, Toby and Toni left and, without telling Lana, had Toby’s cousin Todd move in. Although Lana could have objected under the rental agreement clause prohibiting subletting and assignment, she didn’t.

She accepted rent from Todd, but never had Todd sign a new rental agreement, so he's an "assignee" of Toby's and Toni's. In this situation, Lana would name only Todd as defendant, but list Toby and Toni as the persons in Item 6a to whom she originally rented. (This is true even though Item 6a asks you to list "defendants." Toby and Toni aren't actually defendants, because they no longer live there; the form isn't perfectly designed for every situation.) In Item 6c, you should check the "assignees" box to indicate that Todd, not named in 6a, is an assignee of the persons who are named.



#### **Item 6d:** Box d should

be checked if there was a change in any of information provided in Item 6a since the original tenancy began. For instance, if the rent is higher now than it was at first, this is the place for you to say so, especially if your eviction is for nonpayment of rent and you are seeking unpaid rent. If there have been several rent increases, list them all, in chronological order.

**EXAMPLE:** Leon rented his property on a month-to-month basis to Teresa on January 1, 2007, for \$800 per month. (This date and former rent amount should be listed in Item 6a.) On July 1, 2007, Leon gave Teresa a 60-day notice (required for rent increases of more than 10%), that her rent would be increased from \$800 to \$900 effective September 1, 2007. Leon should check box d under Item 6 and after the words "The agreement was later changed as follows (specify):" type the following:

"On July 1, 2007, Plaintiff notified defendant in writing that effective September 1, 2007, the rent would be increased to \$900 each month."

**EXAMPLE:** Teresa's neighbor, Juan, moved into one of Leon's apartments on January 1, 2007. On December 1, Leon told Juan his rent would go from \$650 to \$700, effective January 1, 2008. However, Leon forgot to give Juan the required written 30-day notice. (See *The California Landlord's Law Book: Rights and Responsibilities*, Chapter 14.) Still, Juan paid the increased rent for several months, beginning in January 2008. Even though Leon should have raised the rent with a written notice,

Juan effectively "waived" or gave up his right to a written notice by paying the increase anyway. (Note: This may not be true in a rent control city, especially if the increased rent exceeds the legal rent for the property.) Now, in June 2008, Juan won't pay the rent (or move) and Leon has to sue him. Check box d under Item 6 and type in the following:

"On December 1, 2007, plaintiff notified defendant that effective January 1, 2008, the rent due would be increased to \$700 each month, and defendant agreed to and did pay the increased rent on its effective date."

Another common event that should be recorded in Item 6d is any change in the type of tenancy (for example, from a fixed-term lease to a month-to-month tenancy).

**EXAMPLE:** On June 1, you rented your property to Leroy for one year under a written lease. Leroy didn't leave on June 1 of the following year and paid you the usual rent of \$900, which you accepted. Although the original tenancy was one for a fixed term, as should be indicated in Item 6a, it is now month to month. (See Chapter 5.) Check box d in Item 6 and type the following:

"On June 1, 2007, after expiration of the lease term, defendant remained in possession and paid \$900 rent, which plaintiff accepted, so as to continue the tenancy on a month-to-month basis."

Item 6d should also be filled out for changes in the rental period (for example, from bimonthly to monthly) and changes in the date when the rent was due (for example, from the 15th of the month to the first). Simply put, Item 6d is your chance to bring the court up to date as to your current arrangements with your tenants.

You may find that there isn't enough space on the Complaint form to type in all the required information for this item. If you can't fit it in with three typewritten lines that go right up against each margin, type the words "see attachment 6d" and add all the necessary information on a sheet of white typing paper labeled "Attachment 6d." This attachment is stapled to the

Complaint, along with the “Exhibit” copies of the lease/rental agreement and three-day, 30-day, or 60-day notice discussed below. (Be sure to add one more page to the number of pages listed in Item 1 if you do this.)



**Item 6e:** If the rental agreement is oral, skip this box and Item 6f, and go on to Item 7. If the rental agreement or lease is in writing, put an X in this box if you have the original or a copy of it. Attach a photocopy (not a signed duplicate) of the lease or rental agreement to the Complaint (unless you can’t find an original or copy). Write “EXHIBIT 1” on the bottom of the copy. (If you and the tenants signed a new lease or rental agreement after having signed an older version, you need only attach a copy of the most recent lease or rental agreement.) You must include copies of any written amendments or addenda. Finally, keep track of the correct number of pages attached to the Complaint, which you’ll need to list in Item 18 (count two printed sides of one page as two pages).



**If you’re seeking to evict because of nonpayment of rent, you aren’t legally required to attach a copy, but we think it’s a good practice.** If the tenant contests the lawsuit, the judge who hears the case will be more favorably impressed with the way you put your case together if you’ve taken the extra step to attach all relevant documents.



**Item 6f:** This question asks you to explain why, if there is a written rental agreement or lease, you have not attached a copy of it to the Complaint. (You’re not required to do so in rent-nonpayment cases even if you have a copy, though we suggest that you do if you have one.) If your rental agreement is oral, skip this item and go to Item 7. Also skip it if you are attaching a copy of the rental agreement or lease.

If you haven’t attached a copy of a lease or rental agreement, put an X in the box next to Item 6f. Also put an X either in box (1) if you simply don’t have an original or copy of the lease or rental agreement, or in box (2) if your lawsuit is based on nonpayment of rent, and (against our advice) you decide not to attach a copy.



## PLAINTIFF and DEFENDANT.

At the top of the reverse side of the Complaint is a large box labeled “PLAINTIFF (Name):” and “DEFENDANT (Name):” Here, type in capital letters the names of the first-listed plaintiff and defendant the same way their names are listed on the front Caption under “PLAINTIFF” and “DEFENDANT.” Where there are multiple plaintiffs or defendants, you list only the first one here, followed by “ET AL.”

## Item 7: Notice



Check the box immediately following the number 7 to indicate that a notice to quit was served on at least one of the tenants, and fill in the name of the defendant to whom the notice was given. If you served more than one defendant, list all of their names. You will also list the other names and method of service in Items 7b and 7c, below.



Leave Items 7 and 7a through 7f blank if your eviction is being brought under Chapter 5 of this book (that is, if no notice was given the tenant).



**Item 7a:** Check box “(1),” labeled “3-day notice to pay rent or quit.”



**Item 7a:** Check box “(2)” labeled “30-day notice to quit” if that is what you used because the tenancy was for less than a year. (See Chapter 3.) If you had to give a 60-day notice because your tenant occupied the premises for a year or more, check box “(3)” next to the words “other (specify):” and type the words “60-day notice to quit.”

If you used a 90-day notice of termination of tenancy because the tenancy was government-subsidized, check box “(6)” next to the words “Other (specify):” and type the words “90-day notice to quit.”



**Item 7a:** Check either the box labeled “3-day notice to perform covenants or quit” “(4)” (the conditional notice), or “3-day notice to quit” “(5)” (the unconditional notice), depending on which type of notice you served.



**Item 7b:** List the date the period provided in your three-day notice expired. This is the third day, not counting the day the notice was served, after the three-day notice was personally served (eighth day for substituted service), except that when the third (or eighth) day falls on a weekend or legal holiday, the last day is the next business day. (See Chapters 2 and 4 for several detailed examples.) If you used substituted service for your notice or are unsure of your notice's expiration date, return to your "home" chapter (Chapter 2 or 4) and compute the correct expiration date in accordance with our instructions.



**Item 7b:** List the date the period provided in your 30-day or 60-day notice expired. This is the 30th day (or the 60th day) after the notice was personally served (don't count the day the notice was served), except that when the 30th or 60th day falls on a weekend or legal holiday, the last day is the next business day. (See the detailed examples in Chapter 3 to get a better handle on this.) If you used substituted service or are unsure of the proper expiration date, return to Chapter 3 and compute the proper expiration date in accordance with our instructions.



**Don't file until the three, 30, or 60 days have expired.**



Be sure you do not file your papers with the court (see below) until after the date you indicate in Item 7b. Otherwise, the Complaint will be premature, and you may lose the case and have to pay the tenant's court costs.



**Item 7c:** You don't need to fill in a box or add information on this one, which just says that everything in the notice you served (a copy of which you will attach to the Complaint) is true.



**Item 7d:** Put an X in this box. This indicates that your three-day notice contained an "election of forfeiture"—legalese for a statement in the notice that the tenancy is ended if the notice is not obeyed. The form notices in this book include a forfeiture statement.



**Item 7d:** Leave this item blank, since 30-day and 60-day notices do not require a notice of forfeiture.



**Item 7e:** Check this box. Label the bottom of your copy of the three- or 30-day notice "EXHIBIT 2" (even if you don't have an Exhibit 1), and remember to staple it to your Complaint. This is essential.



**Item 7f:** Put an X in box 7f only if (1) there are two or more defendants, *and* (2) you served *two* or more of them with the notice on a different date or in a different manner. (Although the form contemplates checking this box also if two or more defendants were served with different notices, we do not recommend such a procedure.) For example, if Tillie Tenant and Sam Subtenant were each served with a three-day notice on a different day, or if one was served personally and the other served by substituted service and mailing (see Chapter 2), then Lenny Landlord would check this box. However, do not check the box if the two or more defendants are all cotenants on a written lease or rental agreement and you served just one of them on behalf of all tenants.

If you check Item 7f, you should also put an X in Item 8c on the reverse side of the Complaint form. At this point, the information in Items 8a through 8e on content and service of the notice will apply only to the person(s) whose name(s) is listed in Item 7a. You will have to state on a separate page labeled "Attachment 7f/8c," how any other persons were served in a different manner or on a different date. Before doing that, however, you should turn the Complaint form over and complete Items 8a and 8b.



**Item 7f:** Leave Item 7f blank if your eviction is being brought under Chapter 5 of this book—that is, if no notice was served on any tenant.

## Item 8: Service of Notice



This part of the eviction form asks for the details on how you performed service of process. You have a choice: You can complete Items 8a through 8c as explained below,

or you can demonstrate your service compliance by checking Item 8d and supplying as Exhibit 3 a written, signed proof of service indicating when and how the notice was served. Which method is preferable? We suggest using Items 8a through 8c, because these questions prompt you to give the detailed information (especially important in cases of substituted service or service by posting and mailing) that a judge needs to determine whether service was proper. Remember, if you have multiple defendants served different ways, you'll need to add separate attachment pages for each. On the other hand, you may find it easier to simply check Item 8d and attach multiple proofs of service for multiple defendants who were served in different ways or on different dates, instead of filling out Items 8a–8c and adding separate attachments. Put an X in the box after 8a to indicate that a notice was served on your tenant.



Leave Items 8, 8a and 8b and 8c blank, since no notice was served on your tenant.



**Item 8a:** If the defendant listed in Item 7a was personally served with the notice, check the first box (next to the words “by personally handing a copy to defendant on (date):”) “(1),” and type the date she was handed the notice. Then go on to Item 8b.

The second box in Item 8a, next to “by leaving a copy with ...” “(2),” should be checked instead only if you used “substituted service,” that is, you gave the notice to someone at the tenant’s home or workplace and mailed a second copy. On the same line, list the name (or physical description if name is unknown) of the person to whom the notice was given. On the next two lines, fill in the date you delivered the notice, check a box to indicate whether the notice was served at the residence or business address, and list the date the second copy was mailed to the residence address. Then go on to Item 8b.

If you had to resort to “posting and mailing” service because you couldn’t find anyone at the defendant’s home or place of employment, check the third box next to the words “by posting a copy on the premises on (date):” “(3)” and insert the date the notice was posted. Ignore the box by the words “and giving a copy to a person found residing at the premises.” Below that,

list the date the copy of the notice was mailed to the residence address. Next, check one of the two boxes (in front of phrases beginning with “because”) to indicate why you used posting-and-mailing service. In almost all residential cases you should check the second box, next to the phrase “because no person of suitable age or discretion can be found there.” Leave blank the box next to the phrase “because defendant’s residence and usual place of business cannot be ascertained”—after all, you always know the defendant’s residence address in a residential eviction.



The fourth box in Item 8a, followed by the words “*not for 3-day notice*” in parentheses, obviously should be used only if your eviction was preceded by a 30-day or 60-day notice (see Chapter 3) which you served by certified or registered mail.



**Item 8a:** The last (fifth) box in Item 8a should not be checked. It applies only to some commercial tenancies—a subject beyond the scope of this book.



**Item 8b:** Put an X in this box and again list the name(s) of any defendant you served with a termination notice (as you did in Item 7a), only if all of the following are true: (1) there are two or more defendants, (2) two or more of the defendants both signed the written lease or rental agreement, and (3) you did not serve all of the signers of the lease or rental agreement with a notice. For example, Tillie Tenant and Terrence Tenant both signed the rental agreement, and although your Three-Day Notice to Pay Rent or Quit mentioned them both, you only served Terrence. (This is permitted under the case of *University of Southern California v. Weiss* (1962) 208 Cal. App. 2d 759, 769; 25 Cal. Rptr. 475.) In that case, Item 7a on the front should list “Terrence Tenant” as the one served with a notice, Item 6f should not be checked and Item 8b should be checked. At Item 8b, “Terrence Tenant” should again be listed as the person who was served on behalf of the other tenant(s) on the lease or rental agreement.



**Item 8c:** If you put an X in box 7f, you did so because (1) there are two or more defendants, *and* (2) you served two or



PLAINTIFF (Name): LENNY D. LANDLORD	CASE NUMBER:
DEFENDANT (Name): TERRENCE D. TENANT, ET AL	

6. c. ☒ The defendants not named in item 6a are Terrence Tenant
- (1) ☒ subtenants.
- (2) ☐ assignees.
- (3) ☐ other (specify):
- d. ☒ The agreement was later changed as follows (specify): On Jan. 1, 20xx, plaintiff notified defendants in writing that effective Feb. 1, 20xx, the rent would be \$900.00
- e. ☒ A copy of the written agreement, including any addenda or attachments that form the basis of this complaint, is attached and labeled Exhibit 1. (Required for residential property, unless item 6f is checked. See Code Civ. Proc., § 1166.)
- f. ☐ (For residential property) A copy of the written agreement is not attached because (specify reason):
- (1) ☐ the written agreement is not in the possession of the landlord or the landlord's employees or agents.
- (2) ☐ this action is solely for nonpayment of rent (Code Civ. Proc., § 1161(2)).
7. ☒ a Defendant (name each):
- TERRANCE D. TENANT
- was served the following notice on the same date and in the same manner:
- (1) ☒ 3-day notice to pay rent or quit (4) ☐ 3-day notice to perform covenants or quit
- (2) ☐ 30-day notice to quit (5) ☐ 3-day notice to quit
- (3) ☐ 60-day notice to quit (6) ☐ Other (specify):
- b. (1) On (date): August 8, 20xx the period stated in the notice expired at the end of the day.
- (2) Defendants failed to comply with the requirements of the notice by that date.
- c. All facts stated in the notice are true.
- d. ☐ The notice included an election of forfeiture.
- e. ☒ A copy of the notice is attached and labeled Exhibit 2. (Required for residential property. See Code Civ. Proc., § 1166.)
- f. ☒ One or more defendants were served (1) with a different notice, (2) on a different date, or (3) in a different manner, as stated in Attachment 8c. (Check item 8c and attach a statement providing the information required by items 7a-e and 8 for each defendant.)
8. a. ☒ The notice in item 7a was served on the defendant named in item 7a as follows:
- (1) ☒ by personally handing a copy to defendant on (date): August 5, 20xx
- (2) ☐ by leaving a copy with (name or description):
- a person of suitable age and discretion, on (date): at defendant's
- ☐ residence ☐ business AND mailing a copy to defendant at defendant's place of residence on (date): because defendant cannot be found at defendant's residence or usual place of business.
- (3) ☐ by posting a copy on the premises on (date): ☐ AND giving a copy to a person found residing at the premises AND mailing a copy to defendant at the premises on (date):
- (a) ☐ because defendant's residence and usual place of business cannot be ascertained OR
- (b) ☐ because no person of suitable age or discretion can be found there.
- (4) ☐ (Not for 3-day notice; see Civil Code, § 1946 before using) by sending a copy by certified or registered mail addressed to defendant on (date):
- (5) ☐ (Not for residential tenancies; see Civil Code, § 1953 before using) in the manner specified in a written commercial lease between the parties.
- b. ☒ (Name): TERRANCE D. TENNANT
- was served on behalf of all defendants who signed a joint written rental agreement.
- c. ☐ Information about service of notice on the defendants alleged in item 7f is stated in Attachment 8c.
- d. ☐ Proof of service of the notice in item 7a is attached and labeled Exhibit 3.

more defendants with the same notice on a different date or in a different manner. (You generally will not check box 7f or 8c if you checked box 8b to indicate you served one cotenant, but not other written-lease cotenants.) If you did put an X in box 7f, do so in box 8c also. You will then also need to add an extra piece of typing paper titled “Attachment 7f/8c to Complaint—Unlawful Detainer.” On that attachment, you need to explain how the defendant(s) other than the one whose name is mentioned in Item 7a was served in a different manner or on a different date. Use the format of the wording in Item 8a(1), (2), (3), (4), or (5) [certified mail service of 30-day or 60-day notice only]. For example, where Items 7 and 8 show you served Tara Tenant personally with a three-day notice to pay rent or quit on September 4, and you served Sam Subtenant on September 6 by substituted service, boxes 7f and 8c should be checked, and Attachment 8c would state, “Defendant Sam Subtenant was served the three-day notice to pay rent or quit, alleged in Item 7, by leaving a copy with Tara Tenant, a person of suitable age and discretion, on September 6, 20xx, at his residence, and by mailing a copy to him on September 7, 20xx, because he could not be found at his residence or place of business.”



**Item 8d:** If you wish, you may check this box to indicate that

instead of using Items 8a through 8c above to describe how the notice was served, you’re attaching as Exhibit 3 a written, signed proof of service indicating when and how the notice was served. See the discussion at the beginning of Item 8 for the pros and cons of using Item 8d.



#### **PLAINTIFF and DEFENDANT**

At the top of the third page of the complaint (new second sheet) is another large box just like the one at the top of the second page (reverse side of first sheet) of the complaint, labeled “PLAINTIFF (name):” and “DEFENDANT (name):” As before, type the names of the first-listed plaintiff, and first-listed defendant, followed by “et al” if there’s more than one.

### **Item 9: Expiration of Lease**



Do not use this box. It does not apply in evictions based on three-day, 30-day, or 60-day notices.



Check this box if you are proceeding under Chapter 5 on the grounds that your fixed-term lease expired. Do not check it if the reason for the eviction is that the tenant failed to vacate on time after serving you with a 30-day notice.

### **Item 10: Rent Due**



Put an X in box 10. At the end of the sentence following the box, put the amount of rent you demanded in the three-day notice.

Your Complaint will be susceptible to a delaying motion if it ambiguously states that the rent due was something other than that stated on the attached three-day notice, so do not under any circumstances list a different amount.



Leave this box blank. It is solely for evictions based on a Three-Day Notice to Pay Rent or Quit. (See Chapter 2).

### **Item 11: Daily Rental Value**



Check box 11 and list the daily prorated rent. This is the monthly rent divided by 30 or, if the rent is paid weekly, the weekly rent divided by seven. For example, if the rent is \$450 per month, the daily rental value is \$450/30, or \$15. Round the answer off to the nearest penny if it doesn’t come out even. This figure is the measure of the “damages” you suffer each day the tenant stays after the end of the rental period.



#### **PLAINTIFF and DEFENDANT**

At the top of the third page of the complaint (new second sheet) is another large box just like the one at the top of the second page (reverse side of first sheet) of the complaint, labeled “PLAINTIFF (name):” and “DEFENDANT (name):” As before, type the names of the first-listed plaintiff, and first-listed defendant, followed by “et al” if there’s more than one.

## Rent vs. Damages

The difference between “rent” and “damages” is illustrated as follows: On February 1, Tim doesn’t pay his landlord Lenny the monthly \$900 rent. On February 6, Lenny serves Tim a three-day notice. After the three days have elapsed, and Tim still hasn’t paid the rent, the tenancy is terminated. Lenny brings an unlawful detainer action to enforce that termination, and gets a judgment against Tim on March 10. Lenny is still entitled to the \$900 rent for February, since it was all due as rent before the tenancy was terminated.

Since the termination of the tenancy was effective in February, Tim owes no “rent” as such for his stay during March. What Tim does owe Lenny for those ten days is money to compensate Lenny for being unable to rerent the property during that time. Assuming that Lenny could have gotten the same rent from a new tenant, namely \$900 per month or \$30 per day, the “damages” for those ten days would be \$300 in addition to the \$900 rent, for total rent and damages of \$1,200.

### Item 12: Landlord’s Right to Statutory Damages



We normally recommend this box be left blank. By checking it, you allege in the Complaint that the tenant is being “malicious” in staying when he or she should leave, and you are asking for up to \$600 in punitive damages in addition to the rent. (The law does not allow you to ask for more. Before 1994, a landlord could recover “treble damages,” or three times the rent the tenant owed, but now you can recover only \$600 if you can convince a judge the tenant acted maliciously.) If you do check this box, you must then add an Attachment 11 in which you state—in very specific detail—the acts of the tenant which you think show a malicious intent. Because only \$600 of a probably uncollectible judgment is at stake, because the requirements for alleging and proving malicious intent are very technical, and because judges seldom award these types of extra damages, we do not recommend seeking this sum. Also, demanding extra money based

on the tenant’s maliciousness may provoke a delaying response on the part of the tenant. You’re probably better off leaving item 12 blank.

### Item 13: Attorney Fees



Put an X in this box only if you have a written rental agreement or lease (a copy of which should be attached to the Complaint—see Item 6e)—and it has a clause specifically providing that you (or the prevailing party in a lawsuit) are entitled to attorney’s fees. A clause referring only to “costs” or “court costs” isn’t enough.

To be entitled to a court judgment for attorney’s fees, you must also be represented by an attorney. Since you’re representing yourself, you won’t be entitled to attorney’s fees even if you win. Still, you should fill in this part just in case your tenant contests the lawsuit and you later hire a lawyer.

### Item 14: Rent/Eviction Control Ordinance



This box should be checked only if your property is subject to a local rent control law or just cause eviction ordinance. (See “Rent Control and Just Cause Evictions” in Chapter 3 for a list.) When you put an X in this box, you declare under penalty of perjury that you have complied with all rent ceiling, registration, and other applicable requirements under the ordinance. Be sure you have. If you haven’t, or if you’re not sure, do some research. (See *The California Landlord’s Law Book: Rights & Responsibilities*, Chapter 4.)

Once you’re sure you are in compliance, type in the name of the city or county, the title of the ordinance, and the date it went into effect. Much of this information is listed in the Rent Control Chart in Appendix 1 of this volume (as well as *The California Landlord’s Law Book: Rights & Responsibilities*, Chapter 4), but because rent control ordinances are constantly changing, you should also call the local rent control board for the latest information.

### Item 15: Other Allegations



This box does not have to be checked in cases based on three-day, 30-day, or 60-day notices.





Check this box if you're suing a tenant who won't leave after having terminated a month-to-month tenancy by giving you at least 30 days' written notice. You'll have to add an extra paper titled "Attachment 15" to the Complaint. Using a blank sheet of typing paper, type a statement based on this model:

#### Attachment 15

On \_\_\_\_\_ (date) \_\_\_\_\_, 20\_\_\_\_, defendants served plaintiff a written notice terminating their month-to-month tenancy no sooner than 30 days from the date of service of the notice, for the termination to be effective on \_\_\_\_\_ (date) \_\_\_\_\_, 20\_\_\_\_. That period has elapsed, and defendants have failed and refused to vacate the premises.



**Extra Required Allegations.** Some rent control cities require landlords to make additional allegations. For example, Berkeley requires landlords to allege that they are in compliance with the "implied warranty of habitability." Attachment 15 can also be used for this sort of required allegation. The landlord might allege, "Plaintiff is in full compliance with the implied warranty to provide habitable premises with respect to the subject property."

### Item 16: Jurisdictional Limit of the Court



This statement just means you are not asking for more money than the court has the power to give.

### Item 17: Landlord's Requests



Here you list what you want the court to grant. Since you want "possession of the premises" and court costs such as court filing fees, in any unlawful detainer action, there is no box to check for "a" or "b." Put Xs in boxes c, e, and f. Also, put an X in box d if your lease or rental agreement has an attorney fees clause. (See Item 13.)

Fill in the amount of past due rent in the space provided following box c, again making sure this is the same amount stated in Item 10 and in the three-day notice. In the space after the word "(date)": to the lower right of box f, list the date for the next day following the rental period for which the rent is due.

**EXAMPLE:** Larry Landlord served Tanya Tenant with a three-day notice, demanding \$900 rent for the month of September, or September 1 through 30. The first day after that rental period is October 1, 20xx. Larry should put that date after "(date:)" in box f, to ask the court to award him 1/30th of the monthly rent (\$30) for each day after October 1st that Tanya stays.

**EXAMPLE:** Louise Landowner served Tom Tenant with a three-day notice, demanding \$1,000 monthly rent that was due on July 15. Since this rent is due in advance, it covers July 15th through August 14. Louise should put the next day after that, August 15, 20xx, after "(date:)" in box f.



Put X's in boxes e and f for evictions based on both conditional three-day notices to perform covenant or quit and unconditional three day notices. In the space after the word "(date:)" below box f, list the *day after* the three-day notice expiration date you listed in Item 7b(1). Don't check box c, since you can only collect back rent in evictions for nonpayment of rent. You may, however, put an X in box d if your lease or rental agreement has an attorney fees clause. (See Item 13.)



Put an X in box f only. In the space after the word "(date:)" below box f, list the *day after* the 30-day notice expiration date, or the *day after* the fixed-term lease expired. For example, if you or the tenant gave a 30-day notice on July 1, the last day the tenant could legally stay was July 31, and you list August 1, 2007, here. Or, if the tenant's lease expired on December 31, 2007 (and you didn't accept rent after that), list the next day, January 1, 2007.

Don't check box c, since it only applies in evictions for nonpayment of rent. Don't check box e, which only applies in evictions based on three-day notices to quit. (See Chapters 2 and 4.) You may, however, put an X in box d if your lease or rental agreement has an attorney's fees clause. (See item 13.)



Do not check box g unless you insist on asking for extra "statutory damages" of up to \$600 on account of the tenant's malicious conduct, in which case you will

have also checked Item 12. (Once again, we do not recommend doing this.)



Do not check box h.

### Item 18: Number of Pages Attached



List the number of pages to be attached to the Complaint, counting each page of every copy of a rental agreement or lease (Exhibit 1) and three-day, 30-day, or 60-day notice (Exhibit 2), as well as any attachments. (Count each printed side of a piece of paper as a page.) Do not count the pages of the Complaint. Thus, for a Complaint that attached a one-page lease and a one-page three-day, 30-day, or 60-day notice, the number of added pages should be “2.”

### Item 19: Unlawful Detainer Assistant



The law requires that a non-attorney who is paid to fill out unlawful detainer paperwork must be registered and bonded. This law does not apply, however, to property owners or to managers who prepare such forms for their employer in the ordinary course of their duties (neither does it apply to attorneys). If you are such a property manager or owner, put an X next to the words “did not” in Item 18, and leave the rest of the item blank. If you are paying a paralegal or other person to fill out or otherwise process your papers (other than just having a process server serve them), or to advise you on filling out the forms, he or she must be registered with the county and bonded, and the “did” box must be checked on Item 18. That person’s name, address, phone number, and registration information must then be listed on Item 19 of the Complaint form. (If you let an unregistered person prepare your forms for a fee and he or she filled out the “did not” box, remember, *you’re* the one declaring, under penalty of perjury, to the truth of the form when you sign it!)

### Verification and Plaintiffs’ Names, Dates, and Signatures

Type your name in the spaces indicated below Item 19 and, under the heading “VERIFICATION,” type in the date and sign the Complaint in both places.



The two lines side by side above the word “Verification”

are the first of two places to sign and type the name(s) of the plaintiff(s). The name of each person who is listed on the Complaint (and Summons) as a plaintiff should be typed in the space to the left. Their signatures go on the space to the right. For more than one plaintiff, it’s okay to either separate the names and signatures by commas, with all names on one line, or to list one above the other.

Under the “Verification” heading you state under penalty of perjury that all the allegations in the Complaint are true. A name and signature—but only of one plaintiff even if there are several—is required here, too. The plaintiff with the most knowledge about the matter should type her name and the date in the space to the left and sign in the space at the right.



Be sure the date you sign is at least one day after the date in Item 7b of the Complaint—the date the notice period legally expired.

If a partnership is named as plaintiff, the verification printed on the form must be modified. You can do this by using correction fluid to “white out” the line of instructions in parentheses just below the word “Verification,” and typing over it “I am a partner of the partnership which is.” Then, on the next line, white out the words “I am.” The verification should then begin “I am a partner of the partnership which is the plaintiff in this proceeding ....”

## Preparing the Civil Case Cover Sheet

This form must be filed with the court at the same time as your Complaint. Its purpose is to tell the court what kind of a civil case you’re filing, and it’s used when filing any type of civil case. (The second page is full of information and instructions that are either irrelevant to your case or unnecessary in light of the information you’re getting from this book.) We’ve preprinted this form with all the information needed to tell the court clerk you’re filing an unlawful detainer action to evict the tenant from a residence (as opposed to a commercial building). You need only type in the following information:

PLAINTIFF (Name):	LENNY D. LANDLORD	CASE NUMBER:
DEFENDANT (Name):	TERRENCE D. TENANT, ET AL	

9. ☐ Plaintiff demands possession from each defendant because of expiration of a fixed-term lease.
10. ☒ At the time the 3-day notice to pay rent or quit was served, the amount of **rent due** was \$ 900.00
11. ☒ The fair rental value of the premises is \$ 30 per day.
12. ☐ Defendant's continued possession is malicious, and plaintiff is entitled to statutory damages under Code of Civil Procedure section 1174(b). (State specific facts supporting a claim up to \$600 in Attachment 12.)
13. ☒ A written agreement between the parties provides for attorney fees.
14. ☒ Defendant's tenancy is subject to the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):

City of Los Angeles, Rent Stabilization Ordinance, enacted April 12, 1979.

Plaintiff has met all applicable requirements of the ordinances.

15. ☐ Other allegations are stated in Attachment 15.
16. Plaintiff accepts the jurisdictional limit, if any, of the court.
17. **PLAINTIFF REQUESTS**
- |   |   |
|---|---|
| a. possession of the premises                                       | f. <input checked="" type="checkbox"/> damages at the rate stated in item 11 from             |
| b. costs incurred in this proceeding:                               | (date): September 1, 20xx for each day that   |
| c. <input checked="" type="checkbox"/> past-due rent of \$900.00    | defendants remain in possession through entry of judgment.                                    |
| d. <input checked="" type="checkbox"/> reasonable attorney fees.    | g. <input type="checkbox"/> statutory damages up to \$600 for the conduct alleged in item 12. |
| e. <input checked="" type="checkbox"/> forfeiture of the agreement. | h. <input type="checkbox"/> other (specify):  |
18. ☒ Number of pages attached (specify): 3

#### UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400–6415)

19. (Complete in all cases.) An unlawful detainer assistant ☒ did **not** ☐ did for compensation give advice or assistance with this form. (If plaintiff has received **any** help or advice for pay from an unlawful detainer assistant, state:)
- |  |                            |
|--|----------------------------|
| a. Assistant's name:                   | c. Telephone No.:          |
| b. Street address, city, and zip code: | d. County of registration: |
|  | e. Registration No.:       |
|  | f. Expires on (date):      |

Date: August 10, 20xx

LENNY D. LANDLORD

(TYPE OR PRINT NAME)

*Lenny D. Landlord*

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

#### VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 10, 20xx

LENNY D. LANDLORD

(TYPE OR PRINT NAME)

*Lenny D. Landlord*

(SIGNATURE OF PLAINTIFF)

- Type your name, address, and telephone number in the box at the left top of the page, and the court's name, including division, and address in the box below that.
- In the third box near the top of the page, entitled "CASE NAME," type in capital letters the last name of the first plaintiff (you) before the "vs." and the last name of the first defendant after the "vs." For example, if Leslie Smith and Laura Smith-Jones are suing Don Brown and Debra Miller, the case name is "SMITH vs. BROWN."
- Leave the CASE NUMBER box blank. As for Items 1 through 4 on this form, we have filled this information in for you. (It is always the same for residential unlawful detainer actions.)
- In Item 5, check "is not" (your eviction case won't be a class action lawsuit). Ignore Item 6 (it's highly unlikely that you'll have another, related case ongoing when you file your eviction lawsuit).
- Put the date and type your name in capital letters, in the spaces provided (labeled "Date:" and "(TYPE OR PRINT NAME)"). Then sign the form at the lower right in the space provided.
- You will need to make only one copy for your records, which the court clerk will date-stamp and return to you. You do not need to serve any copies on the tenant(s) along with copies of the Summons and Complaint.



A blank, tear-out version of the Civil Case Cover Sheet is in Appendix 3. The CD-ROM also includes this form. Instructions for using the CD are in Appendix 2.

In Los Angeles County, you'll also need to complete the Civil Case Cover Sheet Addendum and Statement of Location, which you'll file with your regular cover sheet. This form tells the court what kind of unlawful detainer action you're commencing (if the eviction is based on the tenant's drug use or sales, your case will proceed quickly), and why you've chosen this courthouse location. Complete the "Short Title" information at the top of each page by listing your name and the last name of the first defendant (for example, Landlord vs. Tenant). On the second page under column two, check box A6020 (Unlawful Detainer—Residential) or A6022 (Unlawful Detainer—Drugs). Under column three, circle reason 6 (the

rental property should be within the area served by the courthouse you've chosen). On page 4, under Item III, check box 6 and include the rental property's address.



Use the Internet to identify the correct court branch in L.A. Go to the L.A. County Superior Court website ([www.lasuperiorcourt.org](http://www.lasuperiorcourt.org)) and choose "Locations" under "About The Court." Then select the "Filing Court Locator." After entering the Zip code of the rental property, you'll learn the proper courthouse for your case.

## Getting the Complaint and Summons Ready to File

Now that you have filled out the Complaint, go through the instructions again and double-check each step, using the sample Complaint form set out on the preceding few pages as a guide.

Finally, place the pages of the Complaint in the following order:

1. unlawful detainer Complaint (front facing you, on top)
2. attachments, in numerical order if there are more than one
3. Exhibit 1 (copy of written rental agreement) if applicable
4. Exhibit 2 (copy of three-day, 30-day, or 60-day notice) if notice was served.

Fasten them with a paper clip for now.

Before you take the Summons, Civil Case Cover Sheet, and Complaint to court for filing and stamping, you need to:

- Make one copy of the Complaint (together with attachments and exhibits) for your records, plus one copy to be served on each defendant. The original will be filed with the court. Make sure to copy both sides of the Complaint, using a two-sided copying process if possible. Be sure that the front and back of the Complaint you submit to the court are in the same upside down relation to each other as is the form in the back of this book.
- Make two copies of the Summons for each defendant and one for your records. For example, if you named three defendants in your Complaint, make seven copies of the Summons.

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): LENNY D. LANDLORD 12345 Angeleno Street Los Angeles, CA 90010 TELEPHONE NO.: 213-555-6789 FAX NO.: 213-555-5678 ATTORNEY FOR (Name): Plaintiff in Pro Per		<b>FOR COURT USE ONLY</b>          CASE NUMBER:    JUDGE:    DEPT:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 110 North Grand Avenue MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: CENTRAL DISTRICT/DOWNTOWN BRANCH		
CASE NAME: LANDLORD vs. TENANT		
<b>CIVIL CASE COVER SHEET</b> <input type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input checked="" type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1–5 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:


<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input checked="" type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	--

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Type of remedies sought (check all that apply):  
 a. ☒ monetary    b. ☒ nonmonetary; declaratory or injunctive relief    c. ☐ punitive
4. Number of causes of action (specify):
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 10, 20xx

Lenny D. Landlord

(TYPE OR PRINT NAME)

 Lenny D. Landlord

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

- Make one copy of the Civil Case Cover Sheet for your records. Since this form is not served on the defendant, you don't need to make any more.

## Filing Your Complaint and Getting Summonses Issued

To file your unlawful detainer Complaint, follow these steps.

**Step 1:** Take the originals and all the copies of your papers to the court's "civil" filing window at the courthouse and tell the clerk you want to file an unlawful detainer action.

**Step 2:** Give the clerk the original Civil Case Cover Sheet and Complaint to be filed with the court. Ask the clerk to "file-stamp" each of your copies and give them back to you. He will rubber-stamp each of the copies with the date, the word "FILED," and a case number.

**Step 3:** Give the clerk one copy of the Summons per defendant and ask him to "issue" a Summons for each. The clerk will stamp the court seal on each of these Summonses and fill in the date of issuance; these are now original Summonses, and the clerk gives them back to you.

**Step 4:** Give the clerk the other copies of the Summons, telling him they are copies to be "conformed." He will stamp them with the date, but not the court seal. Staple one of these Summons copies to the front of each Complaint copy. Both are to be served on the defendants at the same time. (The original Summonses are returned to the clerk after the copies are served—see below.)

**Step 5:** Pay the court filing fee of around \$140, though the exact amount varies, depending on the county.

## Serving the Papers on the Defendant

After you've filed your unlawful detainer Complaint and had the Summonses issued, a copy of the Summons and of the Complaint must be served on each person you're suing. This is called "service of process," and it's an essential part of your lawsuit. The reason for this is simple: A person being sued is constitutionally entitled to be notified of the nature of the lawsuit against him and how he may defend himself.

The Summons tells a defendant that he must file a written response to the allegations in your Complaint within five days of the date of service or lose by "default." Unlike service of notices to quit, where service on one tenant is often considered service on others, each person sued must be separately served with copies of the Summons and Complaint.

If you don't follow service rules to the letter, you lose. For example, a "shortcut" service of Summons and Complaint, where the papers are given to the first person who answers the door at the property, instead of being properly handed to the defendant himself, is not valid. This is true even if the papers nevertheless are eventually given to the right person. (If the defendant cannot be found, the strict requirements of "substituted service"—discussed in "Substituted Service on Another Person," below—including repeated attempts to personally serve, followed by mailing a second copy, must be followed.)

## Who Must Be Served

Each defendant listed in the Summons and Complaint must be served. It doesn't matter that the defendants may live under the same roof or be married. If you don't serve a particular defendant, it's just as if you never sued her in the first place; the court can't enter a judgment against her, and she cannot be evicted when the sheriff or marshal comes later on. She not only will be allowed to stay, but may even be free to invite the evicted codefendants back in as "guests." (Minor children are evicted along with their parents, without the necessity of naming them as defendants and serving them with Complaints.)

## Service on Unknown Occupants (Optional)

If you don't serve copies of the Summons and Complaint on everyone residing in the property as of the date you filed the Complaint, the eviction may be delayed even after you've gotten a judgment and arranged for the sheriff or marshal to evict. That's because occupants who weren't served with the Summons and Complaint were never really sued in the first place. After you get a court order for possession and the sheriff posts the property with a notice advising the occupants they have five days to move or be bodily evicted, the unserved occupants can file a Claim of Right to Possession with

the sheriff and stop the eviction until you redo your lawsuit to get a judgment against them. (C.C.P. § 1174.3.) Coping with this problem is difficult, time-consuming, and beyond the scope of this book, and a lawyer is almost a necessity.

How can you avoid this? State law gives you an option: A sheriff, marshal, or registered process server, when serving the Summons and Complaint on the named defendants, can ask whether there are any other occupants of the property that haven't been named. If there are occupants who aren't named, the sheriff, marshal, or registered process server can then serve each of them, too, with a blank Prejudgment Claim of Right to Possession form and an extra copy of the Summons and Complaint, and indicate this on the proof of service. The unnamed occupants have ten days from the date of service to file any Claim of Right to Possession; they can't file it later when the sheriff is about to evict. If anyone does file a claim, he or she is automatically added as a defendant. (The court clerk is supposed to do that and notify you of such by mail.) The person filing a claim then has five days to respond to the Summons and Complaint. If they don't, you can obtain a default judgment for possession (see Chapter 7) that includes the new claimant as well as the other named defendants.

With this optional procedure, an unknown occupant will be less likely to file such a claim, since the threat of eviction is not as immediate as when the sheriff offers this opportunity only days before the actual eviction. (C.C.P. §§ 415.46, 1174.25.) On the other hand, this optional procedure may not be necessary if you have no reason to believe there are occupants of the property whose names you don't know. Because only a sheriff, marshal, or private process server can serve the papers when you follow this procedure, the eviction may be more costly or proceed more slowly. Also, if you use this option, you will have to wait ten days from service, rather than the usual five, to obtain a judgment that would include unnamed occupants.



A blank, tear-out version of the Prejudgment Claim to Right of Possession is in Appendix 3. The CD-ROM also includes this form. Instructions for using the CD are in Appendix 2.

If you want to have any unknown occupants served, you will need to make as many extra copies of the

Summons and Complaint and claim form as you anticipate need to be served on unknown occupants. Fill out the caption boxes at the top of the Prejudgment Claim of Right to Possession form as you have on your other court forms, and leave the rest of it blank. Your instructions to the process server, sheriff, or marshal should include a statement something like this: "Enclosed are two additional sets of copies of the Summons and Complaint, together with a blank Prejudgment Claim of Right to Possession form; please serve the same on any unnamed occupants of the premises pursuant to C.C.P. § 415.46. Please indicate this type of service on your Proof of Service."

## Who May Serve the Papers

The law forbids you (the plaintiff) from serving a Summons and Complaint yourself, but any other person 18 or older and not named as a plaintiff or defendant in the lawsuit can do it. You can have a marshal or sheriff's deputy, a professional process server, or just an acquaintance or employee serve the papers. (If you have a friend or employee serve the papers, have him read the part of this chapter on how to serve the papers and fill out the "Proof of Service" on the original Summons.) However, if you use the optional procedure shown in the section above for serving a Claim of Right to Possession on any unnamed occupants, you must use a marshal or sheriff's deputy or registered process server. An ordinary individual cannot serve the Claim of Right to Possession.

What about having your spouse serve the papers? Although no statute or case law specifically disallows spouses not named in the Complaint from serving papers for the named spouse, this isn't a good idea. Since spouses almost always share an ownership interest in real estate (even if the property is only in one spouse's name), a judge could rule, if the tenant contests service, that the unnamed spouse is a "party" because he or she partly owns the property.

Some landlords prefer to have a marshal or deputy sheriff serve the papers to intimidate the tenant and give the impression, however false, that the forces of the law favor the eviction. Not all counties provide this service, however, and in those that do, sheriff's deputies and marshals are occasionally slow and sometimes don't try very hard to serve a person who

is avoiding service by hiding or saying she is someone other than the defendant. To have a marshal or deputy serve the Summons and Complaint, go to the marshal's office or the civil division of the county sheriff's office, pay a \$26 fee for each defendant to be served, and fill out a form giving such information as the best hours to find the defendant at home or work, general physical descriptions, and so on.

Professional process serving firms are commonly faster and are often a lot more resourceful at serving evasive persons. They are also a little more expensive, but the money you'll save in having the papers served faster (and therefore in being able to evict sooner) may justify the extra expense. If you have an attorney, ask her to recommend a good process serving firm, or check the Yellow Pages for process servers in the area where the tenant lives or works.

### Marshals and Sheriffs

Marshals are the enforcement officers for the courts. They serve court papers, enforce civil court judgments, and physically evict tenants who refuse to leave the property following a judgment of eviction. Los Angeles County and some others have marshal's offices separate from sheriff's offices, but in many other counties—especially in Northern California—the sheriff is designated as the marshal.

## How the Summons and Complaint Copies Are Served



If you use a sheriff, marshal, or professional process server, you can skip this section.

There are only three ways to serve a defendant legally. Again, pay close attention to the rules for the method you use.

Remember that only copies of the Summons, and not the originals with the court seals, should be served on the defendant. If you mistakenly serve the original, you'll have to prepare a Declaration of Lost Summons.

### Personal Service

For personal service, the copy of the Summons and of the Complaint must be handed to the defendant by the server. The person serving the papers can't simply leave them at the defendant's workplace or in the mailbox. If the defendant refuses to take the paper, acts hostile, or attempts to run away, the process server should simply put the papers on the ground as close as possible to the defendant's feet and leave. The person serving the papers should never try to force a defendant to take them—it's unnecessary and may subject the process server (or even you) to a lawsuit for battery.

Personal service of the papers is best; if you have to resort to either of the other two methods, the law allows the defendant an extra ten days (15 days instead of five) to file a written response to the Complaint. It is therefore worthwhile to make several attempts at personal service at the defendant's home or workplace.

Before personally serving the papers, the process server must check boxes 1 and 4 on the bottom front of the Summons copies to be served and fill in the date of service in the space following box 4. A sample is shown below. It's better for the process server to fill the information in on the Summons copy in pencil before service—so it can be changed later if service isn't effected that way or on that date. This is also less awkward than doing it right there just as you've located the angry defendant.

Some individuals have developed avoidance of the process server into a high (but silly) art. It is permissible, and may be necessary, for the person serving the papers to use trickery to get the defendant to open the door or come out of an office and identify himself. One method that works well is for the process server to carry a wrapped (but empty) package and a clipboard, saying he has a "delivery" for the defendant and requires her signature on a receipt. The delivery, of course, is of the Summons and Complaint. If all else fails, your process server may have to resort to a "stakeout" and wait for the defendant to appear. It's obviously not necessary to serve the defendant inside his home or workplace. The parking lot is just as good.

When serving more than one defendant, it's sometimes difficult to serve the remaining defendant after having served one. For example, if one adult in the family customarily answers the door and is served the papers, it's unlikely that she will cooperate by



POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): LENNY D. LANDLORD 12345 ANGELENO STREET LOS ANGELES, CA 90010 TELEPHONE NO.: 213-555-6789 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name) Plaintiff in Pro Per		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 110 North Grand Avenue MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: CENTRAL DISTRICT/DOWNTOWN BRANCH		
PLAINTIFF/PETITIONER: LENNY D. LANDLORD DEFENDANT/RESPONDENT: TERRANCE D. TENANT, TILLIE D. TENANT		CASE NUMBER:
<b>PROOF OF SERVICE OF SUMMONS</b>		Ref. No. or File No.:

(Separate proof of service is required for each party served.)

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of:
  - ☐ summons
  - ☒ complaint
  - ☐ Alternative Dispute Resolution (ADR) package
  - ☐ Civil Case Cover Sheet (served in complex cases only)
  - ☐ cross-complaint
  - ☐ other (specify documents):
- Party served (specify name of party as shown on documents served):  
TERRANCE D. TENANT
  - ☐ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
- Address where the party was served: 6789 Angel Blvd., Apt. 10, Los Angeles, CA 90010
- I served the party (check proper box)
  - ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): September 11, 20xx (2) at (time): 2:15 PM
  - ☐ **by substituted service.** On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
    - ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
    - ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

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calling the other defendant to the door so that your process server can serve that person too. So, when one person answers the door, the process server should ask whether the other person is at home. Usually the defendant who answers the door will stay there until the other person comes to the door—at which time your process server can serve them both by handing the papers to each individual or laying them at their feet.

### Substituted Service on Another Person

If your process server makes three unsuccessful attempts to serve a defendant at home, at times you would reasonably expect the defendant to be there, he can give the papers to another person at the defendant's home, workplace, or usual mailing address (other than a U.S. Postal Service mailbox) with instructions to that person to give papers to the defendant.

If the papers are left at the defendant's home, they must be given to "a competent member of the household" who is at least 18 years old. In addition, the server must mail a second copy of the Summons and Complaint to the defendant at the place where the Summons was left. (C.C.P. § 415.20(b).) This is called "substituted service."

There are two disadvantages to this method. First, several unsuccessful attempts to find the defendant have to be made and must be documented in a separate form (discussed below). The second disadvantage is that the law allows the defendant ten extra days (or 15 days) to respond to a Summons and Complaint served this way. So using this method instead of personal service means that the eviction will be delayed ten days.

In most instances, unless your process server can serve a defendant at home, it's better to get a professional process server to make substituted service. If you send a relative or friend to try to serve a tenant at work, you could regret it, as service at work is likely to create a lot of hostility. It may even prompt the tenant to go out and get herself a lawyer, when she otherwise might have simply moved out.

### Post Office Boxes

A tenant who is never home to be served (and no one ever answers the door at the tenant's home) *cannot* be served at a "usual mailing address" if that address happens to be a post office box at a U.S. Postal Service public post office. However, if the tenant rents a box at a *private* post office (such as Mailboxes, Etc.) and regularly uses that address and box, he may be served there by substituted service on the person in charge of the mail drop, followed by mailing a second copy of the Summons and Complaint (from a real U.S. Postal Service mailbox).

**EXAMPLE:** You name Daily and Baily as defendants. When your process server goes to serve the papers, only Daily is home. He serves Daily personally. Baily, however, has to be served before you can get a judgment against him. Two more attempts to serve Baily fail, when Daily answers the door and refuses to say where Baily is. The process server uses the substituted service technique and gives Daily another set of papers—for Baily—and mails still another set addressed to Baily. Service is not legally effective until the tenth day after giving the papers to Daily and mailing a second copy of the papers to Baily. This means that you'll have to wait these ten days, plus the five day "response time," (see "What Next?" below) for a total of 15 days, before you can take a default judgment against Baily.

Before serving the papers by substituted service, the process server should check box 3 on the bottom front of the Summons copy and also check the box next to "CCP 416.90 (individual)" and should write in the name of the defendant served this way (not the person to whom the papers are given) after the words "On behalf of." Of the boxes below box 3 and indented, check the box labeled "other" and add "C.C.P. § 415.20" after it to indicate that substituted service was used. As with personal service, check box 4 and fill in the date of delivery of the papers. A sample is shown below.

If the process server plans to serve a Prejudgment Claim to Right of Possession (see "Service on Unknown Occupants (Optional)," below), the server should check

PLAINTIFF/PETITIONER: LENNY D. LANDLORD	CASE NUMBER:
DEFENDANT/RESPONDENT: TERRANCE D. TENNANT	

5. c. ☐ **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgment of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

- d. ☐ **by other means** (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☒ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☐ On behalf of (specify):
- under the following Code of Civil Procedure section:
- |   |   |
|---|---|
| <input type="checkbox"/> 416.10 (corporation)                     | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |

7. **Person who served papers**

- a. Name: Sam D. Server
- b. Address: 1000 A Street, Los Angeles, CA 90010
- c. Telephone number: 213-444-7000
- d. The fee for service was: \$ 50.00
- e. I am:
- (1) ☒ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☐ a registered California process server:
- (i) ☐ owner ☐ employee ☐ independent contractor.
- (ii) Registration No.:
- (iii) County:

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: September 11, 20xx

Sam D. Server

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



Sam D. Server

(SIGNATURE)

DECLARATION RE REASONABLE DILIGENCE FOR  
SUBSTITUTED SERVICE OF SUMMONS ON INDIVIDUAL

I, SARAH SERVER, declare:

I am over the age of 18 years and not a party to this action.

On August 13, 20xx, I served the Summons and Complaint on defendant Terrence Tenant by leaving true copies thereof with Teresa Tenant at defendant's place of residence and mailing a second set of copies thereof addressed to defendant at his place of residence.

Prior to using substituted service to serve defendant Terrence Tenant, I attempted on the following occasions to personally serve him:

1. On August 10, 20xx, at 5:30 P.M., I knocked on the front door of defendant's residence. A woman who identified herself as Teresa Tenant answered the door. I asked her whether I could see either Terrence or Tillie Tenant and she replied, "They're not at home."

2. On August 12, 20xx, at 3:00 P.M., I went to defendant Terrence Tenant's place of employment, Bob's Burgers, 123 Main Street, Los Angeles, and was told that defendant Terrence Tenant had recently been fired.

3. On August 13, 20xx, at 7:00 A.M., I again went to defendant's home. Again, Teresa Tenant answered the door and said that Terrence Tenant was not home. I then gave her the papers for Terrence Tenant.

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

DATED: August 13, 20xx

Sarah Server  
SARAH SERVER

box c next to the words, “as an occupant,” and also box d, next to “CCP 425.46 (occupant).”

The process server must fill out the Proof of Service of Summons (see below) and sign and date a declaration detailing her attempts to locate the defendant for personal service. This declaration is attached to the original Summons. A sample is shown below.

### “Posting-and-Mailing” Service

Occasionally, a process server isn’t able to use either personal or substituted service to serve a defendant with copies of the Summons and Complaint. For example, if your tenant lives alone and is deliberately avoiding service, and you don’t know where he works (he’s no longer at the job listed on his application several months ago), the law provides that your process server can post copies of the Summons and Complaint on his front door and mail a second set of copies.

As with substituted service, this “posting-and-mailing” method also gives the defendant an extra ten days to file a response with the court, and so ten more days (total of 15 days) must go by before you can get a default judgment.

Posting and mailing can be more complicated than it looks, and we strongly recommend that you let a process server or a lawyer handle it. There are just too many ways to make a mistake, and, if you do, your whole lawsuit will fail.

Before you can use posting and mailing, you must get written permission from a judge. Your process server must show that he has made at least two, and preferably three, unsuccessful attempts to serve the papers at reasonable times. For example, an attempt to serve an employed defendant at home at noon on a weekday, when she would most likely be at work, isn’t reasonable. Attempts to serve at unreasonable hours may subject you to legal liability for invasion of privacy or intentional infliction of mental distress—another good reason to let someone experienced handle it. However, a sample form (Application and Order to Serve Summons by Posting for Unlawful Detainer) for getting permission from a judge for this type of service is shown below. Keep in mind, though, that this sample should be adapted to your own situation.



A blank, Application and Order to Serve Summons by Posting for Unlawful Detainer is in Appendix 3.

The CD-ROM also includes this page. Instructions for using the CD are in Appendix 2.

### Filling Out the Proof of Service of Summons Form

Once the process server has served the copies of the Summonses, the server must fill out a “Proof of Service of Summons” form and staple it to the original Summons. (Remember, there is one original Summons for each defendant.) If you use a sheriff, marshal, or registered process server, that person should do this for you. So, even where two or more defendants are served at the same time and place by the same process server, two separate Proofs of Service—each stapled to each original Summons—should be filled out. When this form is filled out and returned to the court clerk (see Chapter 7), it tells the clerk that the tenant received notice of the lawsuit, an essential element of your lawsuit. Here’s how to complete the Proof of Service of Summons. The process server must fill out a Proof of Service of Summons for each defendant.



A blank, tear-out version of the Proof of Service of Summons is in Appendix 3. The CD-ROM also

includes this form. Instructions for using the CD are in Appendix 2.

**In the box at the top of the form,** fill in the plaintiff’s and defendant’s names, and leave blank the box entitled “case number.”

**Item 2:** Check the box next to “Complaint.” If a sheriff, marshal, or registered process server served a Prejudgment Claim of Right to Possession using the optional procedure discussed above, that person should also check the box next to “other (specify documents)” and add, “Prejudgment Claim of Right to Possession.”

**Item 3a:** Type the name of the defendant for whom this Summons was issued and on whom the copies were served.

**Item 3b:** Leave this box blank (it’s for the unlikely event that your tenant has a designated agent who will accept service of process).

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY OR PARTY WITHOUT ATTORNEY: LENNY D. LANDLORD 12345 Angeleno Street Los Angeles, CA 90010 Tel: 213-555-6789 ATTORNEY FOR (Name): Plaintiff in Pro Per	STATE BAR NUMBER	<i>Reserved for Clerk's File Stamp</i>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>		
COURTHOUSE ADDRESS: 110 N. Grand Avenue, Los Angeles, CA 90012		
PLAINTIFF: LENNY D. LANDLORD		
DEFENDANT: TERRENCE D. TENANT, TILLIE D. TENANT		CASE NUMBER: A-123456-B
<b>APPLICATION AND ORDER TO SERVE SUMMONS BY POSTING FOR UNLAWFUL DETAINER</b>		

1. I am the ☒ plaintiff ☐ plaintiff's attorney ☐ other (specify): \_\_\_\_\_
2. I apply for an order pursuant to Code of Civil Procedure section 415.45 to permit service by posting of the summons and complaint on defendant(s). Specify name(s): Terrence D. Tenant, Tillie D. Tenant  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
3. The complaint seeks possession of property location at: 6789 Angel Street, Apt. 10, Los Angeles, Los Angeles, County, California. The property is ☒ residential ☐ commercial.
4. The notice to quit, or 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 Code of Civil Procedure, Article 3, (other than posting or publication) are required. List attempts to serve, if made by declarant, or attach declaration(s) of process server(s) stating attempts to locate and serve the defendants. If service not made, please explain.

DATE	TIME	REASON SERVICE COULD NOT BE MADE/REMARKS
8/10/xx	5:30 p.m.	Minor daughter answered through door, refused to open and said her parents were not home.
8/12/xx	3:00 p.m.	Defendants not present at place of employment, manager said fired two weeks earlier.
8/13/xx	7:15 p.m.	No one answered the door, though lights on and both defendants' vehicles in driveway.

☒ Declaration(s) of process server stating attempts to locate and serve the defendant(s) is attached and incorporated into this application by reference



POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>LENNY D. LANDLORD</b> 12345 ANGELENO STREET LOS ANGELES, CA 90010 TELEPHONE NO.: 213-555-6789 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name) <b>Plaintiff in Pro Per</b>	FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b> STREET ADDRESS: 110 North Grand Avenue MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: CENTRAL DISTRICT/DOWNTOWN BRANCH	
PLAINTIFF/PETITIONER: <b>LENNY D. LANDLORD</b> DEFENDANT/RESPONDENT: <b>TERRENCE D. TENANT, TILLIE D. TENANT</b>	CASE NUMBER:
<b>PROOF OF SERVICE OF SUMMONS</b>	Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a. ☐ summons
  - b. ☒ complaint
  - c. ☐ Alternative Dispute Resolution (ADR) package
  - d. ☐ Civil Case Cover Sheet (served in complex cases only)
  - e. ☐ cross-complaint
  - f. ☐ other (specify documents):
3. a. Party served (specify name of party as shown on documents served):  
**TERRENCE D. TENANT**
- b. ☐ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served: **6789 Angel Blvd., Apt. 10, Los Angeles, CA 90010**
5. I served the party (check proper box)
  - a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **September 10, 20xx** (2) at (time): **2:15 PM**
  - b. ☐ **by substituted service.** On (date): \_\_\_\_\_ at (time): \_\_\_\_\_ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
    - (1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (2) ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (3) ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): \_\_\_\_\_ from (city): \_\_\_\_\_ or ☐ a declaration of mailing is attached.
    - (5) ☐ I attach a **declaration of diligence** stating actions taken first to attempt personal service.

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PLAINTIFF/PETITIONER: LENNY D. LANDLORD	CASE NUMBER:
DEFENDANT/RESPONDENT: TERRENCE D. TENNANT	

5. c. ☐ **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgment of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ **by other means** (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☒ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☐ On behalf of (specify):
- under the following Code of Civil Procedure section:
- |   |   |
|---|---|
| <input type="checkbox"/> 416.10 (corporation)                     | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |

7. **Person who served papers**

- a. Name: Sam D. Server
- b. Address: 123 Serve Street, Los Angeles, CA 90010
- c. Telephone number: 213-555-1234
- d. The fee for service was: \$ 30.00
- e. I am:
- (1) ☒ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☐ a registered California process server:
- (i) ☐ owner ☐ employee ☐ independent contractor.
- (ii) Registration No.:
- (iii) County:

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: September 10, 20xx

Sam D. Server

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



Sam D. Server

(SIGNATURE)

**Item 4:** Type the address where the defendant (or the person given the papers by substituted service) was served.

**Item 5:** If the defendant was personally served, check box a and list the date and time of service on the same line in subitems (1) and (2).

If the defendant was served by substituted service on another person, check box b, list the date and time the papers were given to this other person, and type the name of that other person in the space just below the first two lines. If you don't know the name of that person, insert the word "co-occupant," "coworker," or whatever other word (such as "spouse of defendant") describes the relationship of the person to the defendant. Check the box in subitem (1) or (2) to indicate whether the papers were left with this other person at the defendant's business or home. Then, indicate in subitem (4) the date that additional copies of the Summons and Complaint were mailed to the defendant (at the home or business address where the papers were left), and the city (or nearest post office branch) from which the second set was mailed. Do not check subitem (3), but do check subitem (5). Be sure to attach the original Declaration re Reasonable Diligence signed and dated by the process server, to the Proof of Service of Summons.

If you used service by posting and mailing, after getting permission from a judge, check box d on the reverse side and after the words "by other means (specify means of service and authorizing code section)" enter the words "C.C.P. § 415.45 pursuant to Court's order, by posting copies of Summons and Complaint on front door to premises at [list full street address] on [list date posted], and mailing copies thereof on [list date of mailing, or words "same date" if applicable] by certified mail addressed to defendant at that address."

**Item 6:** The alphabetical boxes here (a through d)

are the same as those on Item 4 on the front of the Summons (however, box d includes more options).

If personal service was used, check box a.

If substituted service was used, check box c, and also the box next to "CCP 416.90 (authorized person)." Also type the name of the defendant served by substituted service (not the one to whom the papers were given) on line c.

For posting-and-mailing service, check box a.

**Items 7–9, Date and Signature:** In the blank spaces below Item 7, list the home or business address and telephone number of the process server. Next to "The Fee for Service," list the amount you paid, if applicable, to the person who served the Summons. Check box 1 to indicate that this person is not a registered process server. (If you do use a registered process server, they will fill out the Proof of Service of Summons for you.) Do not check box 2 unless the person who served the papers is an attorney or licensed private investigator, or an employee of either. Then, check box 8 and have the person who served the papers date and sign the Proof of Service of Summons at the bottom. Do not check box 9.

## What Next?

Your tenant has two choices after he is properly served with your Summons and Complaint: He can do nothing and lose automatically (in legalese, default), or he can fight the suit. He must decide what to do within five days (15 days if he wasn't personally served with the Summons and Complaint).

If the tenant doesn't file some kind of written response with the court within five days, you can get a default judgment by filing a few documents with the court. No court hearing is necessary. Chapter 7 tells you how to do this. ■

## Taking a Default Judgment

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If your tenant does not contest the unlawful detainer lawsuit by filing a written response to your Complaint, you win the lawsuit almost automatically. The tenant is said to have “defaulted,” and you are entitled to obtain a “default judgment” from the court clerk for possession of the property. Most unlawful detainer actions are uncontested and wind up as defaults. By submitting more papers and, where required, appearing before a judge, you can also obtain a separate default judgment for some or all of the money the tenant owes you.

You can obtain a default judgment if all of the following requirements are satisfied:

- The tenancy was properly terminated.
- The Summons and Complaint were properly served on all the tenants.
- At least five days (counting Saturday and Sunday but not other court holidays) have elapsed from the date the tenant was personally served with the Summons and Complaint (15 days if you used substituted service).
- The tenants have not filed a written response to your Complaint by the time you actually seek your default judgment.

This chapter tells you when and how you can obtain a default judgment. (Refer to the checklist in your “home” chapter for a step-by-step outline of the process.)

## When Can You Take a Default?

If a defendant was personally served with the Summons and Complaint, the law gives her at least five days to respond to your unlawful detainer Complaint. You can’t take a default judgment until this response period has passed. You will have to wait at least six days before you can get a default judgment from the court clerk. This is because you don’t count the day of service or court holidays, which include statewide legal holidays. You do count Saturday or Sunday, however, unless the fifth day falls on Saturday or Sunday.

A tenant who was served with the Complaint and Summons by substituted or posting-and-mailing service has an extra ten days to respond. Thus, you must count 15 days from the date of mailing. If the 15th day falls on a weekend or legal state holiday, you must wait until after the next business day to take a default.

Because you don’t want to give the tenant any more time to file a written response than you have to, you should be prepared to “take a default” against one or all of the defendants on the first day you can. If the defendant beats you to the courthouse and files an answer, you can’t take a default.

How do you know whether or not the tenant has in fact defaulted? Although the tenant is supposed to mail you a copy of any response he files, he may not do so, or he may wait until the last day to file and mail you a copy. To find out if he has filed anything, call the court clerk on the last day of the response period, just before closing time. Give the clerk the case number stamped on the Summons and Complaint and ask if a response has been filed.

Most tenants don’t file a written response. If no response has been filed, you can visit the courthouse when it opens the next day to obtain the default judgment.

If, however, you find to your dismay that the tenant or his lawyer has filed a response to your lawsuit, it will probably take you a few more weeks to evict. (See Chapter 8 on contested eviction lawsuits.)

**EXAMPLE:** Your process server personally served Hassan with the Summons and Complaint on Tuesday, August 2. You can take a default if Hassan doesn’t file a response within five days, not counting the day of service. The first day after service is Wednesday, August 3, and the fifth day is August 7. Because August 7 falls on a Sunday, Hassan has until the end of Monday to file his response and prevent a default. If he hasn’t filed by the end of that business day, you can get a default judgment against him the next day, Tuesday, August 9.

**EXAMPLE:** Angela is a codefendant with Hassan, but neither you nor your process server can locate her at home or work. She is served by substituted service on August 7, when the papers are given to Hassan to give to her, and a second set of papers is mailed to her. She has 15 days to answer. The 15th day after the day of service is Monday, August 22. If she doesn’t file a response by the end of the business day, you can take a default against her on August 23. (As a practical matter, you should probably wait until the 23rd to take Hassan’s

default too, since you won't get Angela out and the property back any sooner by taking Hassan's default first—and it's more paperwork.)



**Don't accept rent now.** Do not accept any rent from your tenant during (or even after) the waiting period (also called "response time") unless you want to allow him to stay. This is true whether you are evicting for nonpayment of rent, termination by 30-day or 60-day notice, breach of the lease, or any other reason. If you do accept rent, you will "waive," or give up, your right to sue, and the tenant can assert that as a defense in his answer. In rent-nonpayment cases, if you care more about getting your rent than getting the tenant out, you should at least insist that the tenant pay all the rent plus the costs of your lawsuit, including any costs to serve papers. Don't be foolish enough to accept partial rent payment with a promise to pay more later. If you do, and it's not forthcoming, you will very likely have to start all over again with a new three-day notice and new lawsuit.

## The Two-Step Default Judgment Process

As part of evicting a tenant, normally you will obtain two separate default judgments:

1. Default Judgment for Possession of property.  
It's fairly easy to get a Judgment for Possession of your property on the day after the tenant's response time passes by simply filing your default papers with the court clerk.
2. Default judgment for any money you are entitled to. Getting a default judgment for back rent, damages, and court costs you requested in your Complaint is more time-consuming; you have to either go before a judge or submit a declaration setting forth the facts of the case. (See below.) And because the judge can only award you damages (prorated rent) covering the period until the date of judgment, your money judgment won't include any days after you get the judgment and before the tenant is actually evicted. (*Cavanaugh v. High* (1960) 182 Cal. App. 2d 714, 723; 6 Cal. Rptr. 525.) For example, a judgment cannot

say, "\$10 per day until defendant is evicted."

Prorated daily damages end on the day of the money judgment. The actual eviction won't occur for at least a week after the possession default is entered unless, of course, the tenant leaves voluntarily before then.

For this reason, it's best to first get a clerk's default Judgment for Possession and then wait until the tenant leaves before you go back to court to get the money part of the judgment. If you do get the money part of the judgment before the tenant is evicted, you are still entitled to the prorated rent for the time between money judgment and eviction. You can deduct this amount from any security deposit the tenant paid you. This isn't quite as good as waiting, because it means less of the security deposit will be available if the place is damaged or dirty. If you wait to enter the default as to rent until after the tenant leaves, you can get a judgment for the entire amount of rent due and still leave the deposit available to take care of cleaning and repairs. (See *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 20.)

## Getting a Default Judgment for Possession

To obtain a default Judgment for Possession of the property, you must fill out and file three documents:

- a Request for Entry of Default
- a Clerk's Judgment for Possession, and
- a Writ of Possession for the property.

Because you want to get your tenant out as fast as possible, you might as well prepare the default judgment forms during your five-day (or 15-day) wait. If the tenant files a response in the meantime, you won't be able to obtain a default judgment, and this work will be wasted. However, the time it takes to prepare these forms is not great. And because of the high percentage of cases that end in defaults, it's a worthwhile gamble.

If the tenant voluntarily moved out after being served with the Summons and Complaint, he still is required to answer the Complaint within five days. Assuming he does not, you should still go ahead and get a money judgment for any rent owed, by skipping to "Getting a Money Judgment for Rent and Costs," below.

## Preparing Your Request for Entry of Default for Possession

Your request for the clerk to enter a default and a Judgment for Possession of the premises is made on a standard form called a Request for Entry of Default. In it you list the names of the defendants against whom you're taking defaults and indicate that you want a "clerk's judgment" that says you are entitled to possession of the property.

If you're suing more than one occupant of the property, and they were all served with the Summons and Complaint on the same day, you can get a default judgment against them all on the same day, by filing one set of papers with all their names on each form.

On the other hand, if you're suing more than one person and they were served on different days (or by different methods), each will have a different date by which he must respond. Your best bet is to prepare one set of papers with all the defaulting defendants' names on them, wait until the response time has passed for all defendants, and take all the defaults simultaneously.

You can fill out a separate set of papers for each defendant and take each defendant's default as soon as the waiting period for each defendant has passed, but there's normally no reason to, unless the tenants with later response times have already moved out or there is something special about the tenants with earlier response times (for example, they have potential retaliation or discrimination claims) that makes it advisable to take their default as soon as possible and get them out of the case. More paperwork is involved, and a default judgment against one tenant won't usually help you get the property back any sooner—you still have the others to deal with.



A blank, tear-out version of the Request for Entry of Default is in Appendix 3. The CD-ROM also includes this form. Instructions for using the CD are in Appendix 2. You'll find a sample filled out below.

On the front of the form, fill in the caption boxes (name, address, phone, name and address of the court, name of plaintiff and defendants, and case number) just as they are filled out on the Complaint. Put Xs in the boxes next to the words "ENTRY OF DEFAULT" and "CLERK'S JUDGMENT." Then fill in the following items:

**Item 1a:** Enter the date you filed the Complaint. This should be stamped in the upper right corner of your file-stamped copy of the Complaint.

**Item 1b:** Type your name, since you're the plaintiff who filed the Complaint.

**Item 1c:** Put an X in the box and type in the names of all the defendants against whom you are having the defaults entered.

**Item 1d:** Leave this box blank.

**Item 1e:** Put an X in box e. This tells the clerk to enter Judgment for Possession of the property. If you used the optional procedure in Chapter 6, "Service on Unknown Occupants," by which a sheriff, marshal, or registered process server served a Prejudgment Claim of Right to Possession on unnamed occupants, also check the box (1). Leave boxes (2) and (3) blank.

**Items 2a–2f:** Because you're only asking for possession of the property at this point, don't fill in any dollar amounts. Just type "possession only" in the "Amount" and "Balance" columns.

**Item 2g:** Type the daily rental value, listed in Item 10 of the Complaint, in the space with the dollar sign in front of it. Then, enter the date you put in box 17.f of the Complaint.

**EXAMPLE:** May Li's \$900 June rent was due on June 1. On June 7, you served her a Three-Day Notice to Pay Rent or Quit, which demanded the rent for the entire month. Monthly rent of \$900 is equivalent to \$30 per day. List this amount in Item 2g of the Request for Entry of Default form. Then, since the last day of the rental period for which you demanded the \$900 rent was June 30, type in the next day, July 1. That is the date the prorated daily "damages" begin, at \$30 per day, and it should be listed in Complaint Item 16f and Item 2g of the Request for Entry of Default form.

**EXAMPLE:** You terminated Mortimer's month-to-month tenancy by serving a 30-day notice on September 10. The 30th day after this is October 9. The day after that, October 10, is the day you are entitled to prorated daily rent. That date should be listed in Item 2g of the Request for Entry of Default form and in Complaint Item 16f. Since Mortimer's monthly rent was \$750, the dollar figure is \$750/30, or \$25 per day. That amount should be listed here (Item 2g) as well as in Complaint Item 10.

CIV-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Lenny D. Landlord 12345 Angeleno Street Los Angeles, CA 90010  TELEPHONE NO.: 213-555-6789      FAX NO. (Optional): 213-555-5678 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff in Pro Per	<b>FOR COURT USE ONLY</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  STREET ADDRESS: 110 North Grand Avenue MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: CENTRAL DISTRICT/DOWNTOWN BRANCH	
PLAINTIFF/PETITIONER: LENNY D. LANDLORD DEFENDANT/RESPONDENT: TERRENCE D. TENANT, TILLIE D. TENANT	
<b>REQUEST FOR (Application)</b> <input checked="" type="checkbox"/> Entry of Default <input type="checkbox"/> Clerk's Judgment <input type="checkbox"/> Court Judgment	CASE NUMBER: A-12345-B

## 1. TO THE CLERK: On the complaint or cross-complaint filed

a. on (date): August 10, 20xx

b. by (name): Lenny D. Landlord

c. ☒ Enter default of defendant (names): TERRENCE D. TENANT, TILLIE D. TENANTd. ☐ I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant (names):

check this box only if you had a Prejudgment Claim of Right of Possession served; otherwise, ignore it

(Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)

e. ☒ Enter clerk's judgment(1) ☒ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The Prejudgment Claim of Right to Possession was served in compliance with Code of Civil Procedure section 415.46.(2) ☐ under Code of Civil Procedure section 585(a). (Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)(3) ☐ for default previously entered on (date):

## 2. Judgment to be entered.

	Amount	Credits acknowledged	Balance
a. Demand of complaint	\$ possession only	\$	\$ possession only
b. Statement of damages *			
(1) Special	\$	\$	\$
(2) General	\$	\$	\$
c. Interest	\$	\$	\$
d. Costs (see reverse)	\$	\$	\$
e. Attorney fees	\$	\$	\$
f. TOTALS	\$	\$	\$

g. Daily damages were demanded in complaint at the rate of: \$ 30.00 per day beginning (date): Sept. 1, 20xx  
(\* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)3. ☒ (Check if filed in an unlawful detainer case) Legal document assistant or unlawful detainer assistant information is on the reverse (complete item 4).

Date: August 16, 20xx

Lenny D. Landlord

(TYPE OR PRINT NAME)

Lenny D. Landlord

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

**FOR COURT  
USE ONLY**(1) ☐ Default entered as requested on (date):(2) ☐ Default NOT entered as requested (state reason):

Clerk, by \_\_\_\_\_, Deputy

CIV-100

PLAINTIFF/PETITIONER: LENNY D. LANDLORD  
 DEFENDANT/RESPONDENT: TERRENCE D. TENNANT, ET AL

CASE NUMBER:  
 A-12345-B

4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant ☐ did ☒ did not for compensation give advice or assistance with this form.  
*(If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state):*

- a. Assistant's name: c. Telephone no.:  
 b. Street address, city, and zip code: d. County of registration:  
 e. Registration no.:  
 f. Expires on (date):

5. ☒ **Declaration under Code of Civil Procedure Section 585.5** (required for entry of default under Code Civ. Proc., § 585(a)).

This action

- a. ☐ is ☒ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).  
 b. ☐ is ☒ is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).  
 c. ☐ is ☒ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was

- a. ☐ not mailed to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (names):  
 b. ☒ mailed first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:

(1) Mailed on (date):

(2) To (specify names and addresses shown on the envelopes):

August 16, 20xx

Terrence D. Tenant, 6789 Angel Street, Apt. 10, Los Angeles, CA 90012

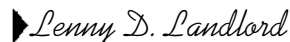
August 16, 20xx

Tillie D. Tenant, 6789 Angel Street, Apt. 10, Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.

Date: August 16, 20xx

Lenny D. Landlord



(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

7. **Memorandum of costs** (required if money judgment requested). Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

- a. Clerk's filing fees ..... \$  
 b. Process server's fees ..... \$  
 c. Other (specify): ..... \$  
 d. .... \$  
 e. TOTAL ..... \$  
 f. ☐ Costs and disbursements are waived.

- g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

8. ☒ **Declaration of nonmilitary status** (required for a judgment). No defendant named in item 1c of the application is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. App. § 501 et seq.).

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

Date: August 16, 20xx

Lenny D. Landlord



(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)



**Item 3:** We have preprinted an “X” in this box to indicate the case is an unlawful detainer proceeding.

Enter the date you’ll be filing the default papers with the court and type in your name opposite the place for signature. Now turn the form over.

**CAPTION:** Type the names of the plaintiff and defendant, just as you did on the second page of the proof of service of summons. (See “Filing Your Complaint and Getting Summonses Issued” in Chapter 6.)

**Item 4:** As we saw when preparing the Complaint (“Preparing the Complaint,” Item 18, in Chapter 6), you must indicate if an “unlawful detainer assistant” or a “legal document preparer” (a bonded paralegal) advised or assisted you. Assuming you are using this book on your own, put an “X” in the “did not” box. Do not complete the rest of Item 4.

**Item 5:** Put an X next to Item 5 and check the boxes next to the words “is not” in Items a, b, and c. (This is a general-purpose form, and none of these items applies to unlawful detainer lawsuits. Even so, many clerks insist that these items be checked, and doing so is easier than arguing.)

**Item 6:** Check box 6b. (You don’t check box 6a because obviously you know the tenant’s most recent address—at your property.) Then, type the date you’ll mail the defendants their copies, and their mailing address, under headings (1) and (2). Below that, again type in the date you’ll be filing the papers, and your name opposite the place for signature.

**Item 7:** Leave this entire item blank. You’ll list your court costs when you file for your money judgment after the tenant is evicted.

**Item 8:** If none of the defendants against whom you’re taking a default judgment is on active duty in the U.S. armed forces (Army, Navy, Marines, Air Force, and Coast Guard), or is a member of the Public Health Service or National Oceanic and Atmospheric Administration, or is in the National Guard and called to active service for more than a month, put an X in box b. Then, simply enter the date you’ll file the papers and type your name opposite the place for you to sign.



If any of the defendants is in the military, no default can be taken against him until a judge appoints an attorney for him. That procedure is fairly complicated and beyond the scope of this chapter. See an attorney if a

person you’re suing is in the military and refuses to leave after you’ve served him with the Summons and Complaint. (Servicemembers’ Civil Relief Act of 1940, 50 U.S.C. App. § 521 et seq.) Some landlords take the expedient shortcut of complaining to their military tenant’s commanding officer about nonpayment of rent or other problems. This often works a lot faster than the legal process.

Make two copies of the completed (but unsigned) form. Don’t sign the Request for Entry of Default until you actually go down to the courthouse to file the papers and have mailed a copy to the defendant. (See below.)

## Preparing the Judgment Issued by the Clerk for Possession of the Premises

The judgment form provides the legal basis for issuance of a Writ of Possession, the document authorizing the sheriff or marshal to evict the tenant. You will present it to the clerk with the Request for Entry of Default.



A blank, tear-out version of the Judgment—Unlawful Detainer is in Appendix 3. The CD-ROM also includes this form. Instructions for using the CD are in Appendix 2.

As with the Summons, Complaint, and Request for Entry of Judgment, there is a statewide form for a judgment in an unlawful detainer case. This Judgment—Unlawful Detainer form can be used in various situations. In the instructions below, we show you how to fill it out as a default judgment issued by the clerk, for possession of the property. (As we’ll see below, this form is filled out in a different way to obtain a default judgment for monetary sums, after the tenant has vacated the property. This form can also be used in contested cases; see “Responding to the Answer” and “Preparing for Trial” in Chapter 8.)

This form is not difficult to fill out. Enter the names and addresses of the landlord and tenant, the court name and address, and the case number as you have done on previous forms (again, we suggest omitting your email address). In the box containing the words “JUDGMENT—UNLAWFUL DETAINER,” put an X in the boxes next to the words “By Clerk,” “By Default,” and “Possession Only.”

1. ☒ **BY DEFAULT**

a. Defendant was properly served with a copy of the summons and complaint.

b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.

c. Defendant's default was entered by the clerk upon plaintiff's application.

d. ☒ **Clerk's Judgment** (Code Civ. Proc., § 1169). For possession only of the premises described on page 2 (item 4).

e. ☐ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered

(1) ☐ plaintiff's testimony and other evidence.

(2) ☐ plaintiff's or others' written declaration and evidence (Code Civ. Proc., § 585(d)).

2. ☐ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.

a. The case was tried on *(date and time)*:

before *(name of judicial officer)*:

b. Appearances by:

☐ Plaintiff *(name each)*:

☐ Plaintiff's attorney *(name each)*:

(1)

(2)

☐ Continued on Attachment 2b (form MC-025).

☐ Defendant *(name each)*:

☐ Defendant's attorney *(name each)*:

(1)

(2)

☐ Continued on Attachment 2b (form MC-025).

c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.

d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

PLAINTIFF: LENNY LANDLORD	CASE NUMBER: A-12345-B
DEFENDANT: TERRENCE D. TENANT ET AL	

JUDGMENT IS ENTERED AS FOLLOWS BY: ☐ THE COURT ☒ THE CLERK

3. **Parties.** Judgment is

- a. ☒ for plaintiff (name each): Lenny Landlord  
and against defendant (name each): Terrence D. Tenant, Tillie D. Tenant

- ☐ Continued on Attachment 3a (form MC-025).  
b. ☐ for defendant (name each):

4. ☒ Plaintiff ☐ Defendant is entitled to possession of the premises located at (street address, apartment, city, and county):

6789 Angel Street, Apt. 10, Los Angeles, CA 90010

5. ☐ Judgment applies to all occupants of the premises including tenants, subtenants if any, and named claimants if any (Code Civ. Proc., §§ 715.010, 1169, and 1174.3).

**check box 5 only if you had a Prejudgment Claim of Right of Possession served; otherwise, ignore it**

6. **Amount and terms of judgment**

- a. ☐ Defendant named in item 3a above must pay plaintiff on the complaint:

(1)	<input type="checkbox"/> Past-due rent	\$
(2)	<input type="checkbox"/> Holdover damages	\$
(3)	<input type="checkbox"/> Attorney fees	\$
(4)	<input type="checkbox"/> Costs	\$
(5)	<input type="checkbox"/> Other (specify):	\$
(6) <b>TOTAL JUDGMENT</b>		\$

- b. ☐ Plaintiff is to receive nothing from defendant named in item 3b.

- ☐ Defendant named in item 3b is to recover costs: \$  
☐ and attorney fees: \$

- c. ☐ The rental agreement is canceled. ☐ The lease is forfeited.

7. ☐ **Conditional judgment.** Plaintiff has breached the agreement to provide habitable premises to defendant as stated in Judgment—Unlawful Detainer Attachment (form UD-110S), which is attached.

8. ☐ **Other (specify):**

☐ Continued on Attachment 8 (form MC-025).

Date: \_\_\_\_\_  
JUDICIAL OFFICER

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

(SEAL)

**CLERK'S CERTIFICATE (Optional)**

I certify that this is a true copy of the original judgment on file in the court.

Date: \_\_\_\_\_

Clerk, by \_\_\_\_\_, Deputy

**Item 1:** Put an X in Item 1 next to the words “BY DEFAULT,” and also in box 1d next to the words “Clerk’s Judgment.”

**Item 2:** Leave this part blank and proceed to the other side (page 2) of the form. At the top of page 2, fill in the names, in capitals, of the plaintiff (you), the first-named defendant (followed by “ET AL” if there is more than one defendant), and the court case number. After the words “JUDGMENT IS ENTERED AS FOLLOWS BY:” put an X in the box following the words “THE CLERK.”

**Item 3:** Put an X in box 3a and type, in upper and lower case, the names of the plaintiff(s) and the names of all defendants against whom you’re obtaining the clerk’s default judgment for possession. Leave box 3b blank.

**Item 4:** Put an X in the box next to the word “Plaintiff” (leave the box next to “Defendant” blank) and list the address of the property including street address, any apartment number, city, and county.

**Item 5:** If you used the optional procedure in Chapter 6 to have Prejudgment Claim of Right to Possession served on unnamed occupants by a sheriff, marshal, or registered process server, check this box. Otherwise, leave it blank.

**Items 6–8:** Leave all these boxes blank.

After you fill out the form, make one copy for your records.

## Preparing the Writ of Possession

The final form you need to evict is the Writ of Possession. (The name of the preprinted form you’ll use is a Writ of Execution. It’s a multipurpose one for use as a writ of “possession,” ordering the sheriff or marshal to put you in possession of real property, or as a writ of “execution” that requests enforcement of a money judgment.) Like the Summons, the Writ of Possession is “issued” by the court clerk, but you have to fill it out and give it to the clerk with the other default forms. (See below.) The clerk will issue the writ as soon as court files contain the Judgment for Possession. The original and copies of the Writ of Possession are given to the sheriff or marshal, who then “executes” the judgment by evicting the tenants against whom you obtained the judgment.



A blank, tear-out version of the Writ of Execution for possession is in Appendix 3. The CD-ROM also includes this form. Instructions for using the CD are in Appendix 2. A form for use in Los Angeles County is also included.

The usual information goes in the big boxes at the top of the writ form—your name, address, and phone number; the name and address of the court; the names of plaintiffs and defendants; and the case number. (There’s also an optional line where you can enter your email address. We advise that you not do so. The court will not communicate with you via email, and since this document is a public record, anyone who looks at it will have your address.) Also put Xs in the box next to the words “Judgment Creditor” in the top large box and in the boxes next to the words “POSSESSION OF” and “Real Property” as shown. Fill out the rest of the writ according to these instructions.

**Item 1:** Type the name of the county in which the property is located. The sheriff or marshal (or constable in justice court districts) of that county will perform the eviction.

**Item 2:** Nothing need be filled in here.

**Item 3:** Put an X in the box next to the words “judgment creditor” and type your name and the names of any other plaintiffs. You are “judgment creditors” because you won the judgment.

**Item 4:** Type in the names of up to two defendants and list the residence address. If you got a judgment against more than two persons, check the box next to the words “additional judgment debtors on reverse.” List the other names and address in the space provided in Item 4 on the back of the form.

**Item 5:** Fill in the date the judgment will be entered. If nothing goes wrong, this should be the date you take the papers down to the courthouse.

**Item 6:** Nothing need be filled in here.

**Item 7:** Only box a, next to the words “has not been requested,” should be checked.

**Item 8:** Leave box 8 blank—it does not apply here.

**Item 9:** Put an X in box 9. On the back side of the form, at Item 24, check boxes 24 and 24a and enter the date the Complaint was filed. Then, if you used the optional procedure in Chapter 6 (“Service on Unknown Occupants”), by which a sheriff, marshal, or registered process server served a Prejudgment Claim of Right to

Page 1 of 2  
Code of Civil Procedure, §§ 699.520, 712.010.  
Government Code, § 6103.5.  
[www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)

EJ-130

PLAINTIFF: LENNY D. LANDLORD

CASE NUMBER:

DEFENDANT: TERRENCE D. TENANT, TILLIE D. TENANT

A-12345-B

— Items continued from page 1 —

21. ☐ Additional judgment debtor (name and last known address):22. ☐ Notice of sale has been requested by (name and address):23. ☐ Joint debtor was declared bound by the judgment (CCP 989–994)

a. on (date):

a. on (date):

b. name and address of joint debtor:

b. name and address of joint debtor:

c. ☐ additional costs against certain joint debtors (itemize):24. ☒ (Writ of Possession or Writ of Sale) Judgment was entered for the following:a. ☒ Possession of real property: The complaint was filed on (date): August 10, 20xx

(Check (1) or (2)):

(1) ☐ The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46.  
The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.(2) ☒ The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.

(a) \$30.00 was the daily rental value on the date the complaint was filed.

(b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following  
dates (specify): September 18, 20xx

Check with court for dates and any special wording

b. ☐ Possession of personal property.☐ If delivery cannot be had, then for the value (itemize in 9e) specified in the judgment or supplemental order.c. ☐ Sale of personal property.d. ☐ Sale of real property.

e. Description of property:

6789 Angel Street, Apt. 10

Los Angeles, CA 90012

## NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (Form EJ-150).  
 WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

► A Claim of Right to Possession form accompanies this writ (unless the Summons was served in compliance with CCP 415.46).

Possession on unnamed occupants, put an X in box (1). Otherwise, put an X in box (2) and list the daily rental value of the property in Item 24a(2)(a)—the same as in Item 10 of the Complaint. For Item 24a(2)(b), call the court clerk for a future date (two to three weeks away), in case a person not named in the writ filed a post-judgment Claim of Right to Possession, and list that date in the space provided. Under e, list the complete street address, including apartment number if any, city, and county of the property.

**Items 10–20:** These items apply only when you get a money judgment, and should not be filled in on this writ, which reflects only a Judgment for Possession of the property. (Later, after you have a default hearing before a judge and get a money judgment, you will fill out another writ (of execution) and fill in Items 10–20—see “Getting a Money Judgment for Rent and Costs,” below.) Instead, simply type the words “POSSESSION ONLY” next to Item 11. Type “0.00” (zero) next to items 18 and 19a. (We have preprinted “0.00” in Item 19b because it always applies, even when collecting the money part of the judgment, which we discuss in Chapter 9.)

You should make one copy of the Writ of Possession for your own records and three copies per defendant to give to the sheriff or marshal.

## Filing the Forms and Getting the Writ of Possession Issued

On the day after the response period ends, after you have made sure no answer was filed (see the first section in this chapter), mail a copy of the Request for Entry of Default to the tenant(s) at the property’s street address. Then sign your name on the three places on the original. (Technically, if you sign this form before you mail the copy to the tenant(s), you will be committing perjury, because in one of the places on the form you state under penalty of perjury that a copy was mailed—before you signed.)

Then take the following forms to the courthouse:

- the original Summons for each defendant, stapled to the Proof of Service of Summons completed and signed by the process server (see Chapter 6)
- the original plus at least two copies of the Request for Entry of Default
- the original plus at least one copy of the Judgment for Possession, and
- the original plus three copies per defendant of the Writ of Possession.

Give the court clerk the originals and copies of all the forms you’ve prepared. Tell the clerk that you’re returning completed Summonses in an unlawful detainer case and that you want him to:

1. enter a default Judgment for Possession of the premises, and
2. issue a Writ of Possession.

He will file the originals of the Summonses, the Proofs of Service of the Summons, the Request for Entry of Default, and the Judgment, but will hand you back the original writ, stamped. The clerk should also file-stamp and hand back to you any copies you give him. You will have to pay a \$7.00 fee for issuance of the writ.

In Los Angeles and Orange Counties, you must fill out a special “local” form before the clerk will issue you a Writ of Possession. The Los Angeles form is called an Application for Writ of Possession for ... Real Property, and is filled out as shown below; a blank copy is included in Appendix 3 and on the CD-ROM. The Orange County form (Application for Writ of Possession—Unlawful Detainer, number L-1051) is simple and needs no instructions from us. You can download the form from the Orange County website at [www.occourts.org/locforms](http://www.occourts.org/locforms). Other counties may also require you to use their own, similar forms—be sure to call the clerk and check it out before heading to the courthouse.

Some readers have told us that in Los Angeles County, clerks won’t enter default judgments over the counter. Instead, you must either come back several days later for your default judgment and writ, or leave a self-addressed, stamped envelope with your papers and the \$7.00 fee so the clerk can send it to you.

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY OR PARTY WITHOUT ATTORNEY		STATE BAR NUMBER	Reserved for Clerk's File Stamp
LENNY D. LANDLORD 1234 Angeleno Street Los Angeles, CA 90010 213-555-6789			
ATTORNEY FOR (Name): In Pro Per			
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>			
COURTHOUSE ADDRESS: 110 North Grand Avenue, Los Angeles, CA 90012			
PLAINTIFF: LENNY LANDLORD			
DEFENDANT: TERRENCE D. TENANT, TILLIE D. TENANT			
<b>APPLICATION FOR ISSUANCE OF WRIT OF EXECUTION, POSSESSION OR SALE</b>			CASE NUMBER: A-12345-B

I, Lenny D. Landlord declare under penalty of perjury under the laws of the State of California:

1. I am the judgment creditor \_\_\_\_\_ in the above-entitled action.
2. The following ☒ Judgment / ☐ Order was made and entered on August 16, 20xx.  
☐ Judgment was renewed on \_\_\_\_\_.
3. Judgment/Order as entered/renewed provides as follows:

Judgment Creditor: (name and address)

Lenny D. Landlord  
1234 Angeleno Street  
Los Angeles, CA 90010

Judgment Debtor: (name and address)

Terrence D. Tenant	Tillie D. Tenant
6789 Angel Street	6789 Angel Street
Los Angeles, CA 90012	Los Angeles, CA 90012

Amount of Order and/or Description of Property:

POSSESSION ONLY; RESIDENTIAL RENTAL PROPERTY

4. ☒ (Unlawful Detainer Proceedings Only) The daily rental value of the property as of the date the complaint was filed is \$ 30.00.
5. ☐ This is an unlawful detainer judgment, and a Prejudgment Claim of Right to Possession was served on the occupant(s) pursuant to Code of Civil Procedure section 415.46. Pursuant to Code of Civil Procedure sections 715.010 and 1174.3, this writ applies to all tenants; subtenants, if any; named claimants, if any; and any other occupants of the premises.
6. ☐ This is a Family Law Judgment/Order entitled to priority under Code of Civil Procedure section 699.510.
7. This writ is to be issued to: ☒ Los Angeles County ☐ Other (Specify): \_\_\_\_\_

**APPLICATION FOR ISSUANCE OF WRIT OF EXECUTION, POSSESSION OR SALE**





## Having the Marshal or Sheriff Evict

Once the court clerk issues the Writ of Possession and gives you the original (plus stamped copies), you are responsible for taking it to the sheriff or marshal, who will carry out the actual eviction. You can get the marshal's or sheriff's location from the court clerk.

Take the original of the Writ of Possession, plus three copies for each defendant you're having evicted, to the office of the marshal or civil division of the sheriff's office (whichever your county has). You will be required to pay a \$75 fee, which is recoverable from the tenant. You must also fill out a set of instructions telling the sheriff or marshal to evict the defendants. Usually the sheriff or marshal has a particular form of instructions, but you can prepare the instructions in the form of a signed letter. A sample letter is shown below.

### Sample Letter of Instructions for Sheriff or Marshal

August 18, 20xx  
12345 Angeleno Street  
Los Angeles, CA 90010

Los Angeles County Marshal  
Civil Division  
210 W. Temple  
Los Angeles, CA 90012

Re: Landlord v. Tenant  
Los Angeles County Superior Court  
Los Angeles District, Case No. A-12345-B

Please serve the writ of execution for possession of the premises in the above-referenced action on Terrence D. Tenant and Tillie D. Tenant and place the plaintiff in possession of the premises at 6789 Angel Street, Apartment 10, Los Angeles, California. You may call me at 213-555-6789 to schedule the final posting/eviction date.

Sincerely,  
*Lenny D. Landlord*  
Lenny D. Landlord

Within a few days (or weeks, in large urban areas) a deputy sheriff or marshal will go to the property and serve the occupants (either personally or by posting and mailing) with a five-day eviction notice that says, in effect, "If you're not out in five days, a deputy will be back to throw you out." (Many sheriffs and marshals will specify the next business day if the fifth day falls on a weekend or holiday.) In most cases, tenants leave before the deadline. If the property is still occupied after five days, call the marshal's or sheriff's office to ask that the defendants be physically evicted. Most sheriff's or marshal's offices don't automatically go back to perform the eviction, so it's up to you to call them if they don't call you.

You should meet the sheriff or marshal at the property to change the locks. If you think the ex-tenant will try to move back into the premises, you may wish to supervise, to make sure he really moves his things out. If he tries to stay there against your wishes or to re-enter the premises, he is a criminal trespasser, and you should call the police.

If you did not have the Prejudgment Claim of Right to Possession forms served (as discussed in Chapter 6), the sheriff or marshal will not physically remove a person who:

- was not named as a defendant in your suit, and
- has filed—before the final eviction date—a written claim that he was in possession of the premises when you filed your suit, or had a right to be in possession before you filed your suit.

For example, if you rented to a husband and wife, sued and served them both with Summonses and Complaint, and got judgments against them both, the sheriff or marshal will refuse to evict the wife's brother who files a claim stating that he moved in months ago at her invitation, even though the rental agreement had a provision prohibiting this. (The optional procedure in Chapter 6 is a sort of preventive medicine to make sure that such unknown occupants can't wait to do this until the sheriff comes, and must do it early in the proceeding.)

If an unknown occupant does file a claim with the sheriff or marshal before the final eviction date, the eviction will be delayed until a later hearing where the person must show why he should not be evicted, too. This involves procedures that are beyond the scope of this book. See an attorney if you encounter this problem.

(We discuss hiring and working with lawyers in *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 8.)

As for the tenant's belongings, the deputy who carries out the eviction will not allow the tenants to spend hours moving their belongings out, nor will their possessions be placed on the street. Rather, the tenant will be allowed to carry out one or perhaps a few armloads of possessions. The remainder will be locked in the unit. Of course, you should change the locks or the tenant may just go right back in. This does not mean you have a right to hold the tenant's possessions for ransom until the back rent is paid. Doing that is illegal and could subject you to a lawsuit. You only have the right to insist on "reasonable storage charges" equal to 1/30th of the monthly rent for each day, starting with the day the deputy sheriff or marshal performs the eviction, as a condition of releasing the property.

Don't be too insistent on this, though. You don't want to have to store a bunch of secondhand possessions on the property and be unable to rent the premises to a rent-paying tenant, nor do you particularly want to front moving and storage charges to have the belongings hauled off to a storage facility. (See *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 21, for a detailed discussion of what you can legally do with a tenant's abandoned property.) Given this reality, it's amazing how many landlords and tenants who've been at each other's throats can suddenly be very reasonable and accommodating when it comes to arranging for the tenant to get his locked-up belongings back.

## Getting a Money Judgment for Rent and Costs

Once the tenants have moved out of the premises, you should seek a judgment for the money they owe you. Although a court clerk can give you a Judgment for Possession of the premises, a money judgment for the rent and court costs (including filing, process server, writ, and sheriff's fees) has to be approved by a judge at a "default hearing." You must also prepare a Request for Entry of Default (the same form you used earlier, filled out differently) and a Judgment form.

Unlawful detainer money judgments against tenants are notoriously difficult to collect. (We discuss collection procedures, as well as the likelihood of success, in Chapter 9.) So why bother getting a judgment? First, you've done most of the work already, and there isn't much more involved. Second, the law gives you ten years to collect (and another ten years if you renew your judgment), and you may someday find the tenant with some money; having a judgment ready will make it easier to collect if and when that happens.

## Determining Rent, Damages, and Costs

The first step is figuring out how much money you're entitled to. You won't know for sure how much this is until the tenant leaves. Use the following guidelines and worksheets.



### Nonpayment of rent cases.

You are entitled to:

- **Overdue rent.** This is the amount of rent you demanded in the three-day notice.

**EXAMPLE:** You served your three-day notice on August 3 for \$900 rent due on the 1st and covering August 1 to 31. You got a default Judgment for Possession on the 16th, and your default hearing is scheduled for August 23. You are entitled to judgment for the entire \$900 rent for August, even if the tenant leaves before the end of the month.

## Get What You're Due

Some judges believe that you're not entitled to the rent for the entire month if you get your judgment before the month is up. This is wrong; rent payable in advance accrues and is due in its entirety for the whole period, without proration on a daily basis. See *Friedman v. Isenbruck* (1952) 111 Cal. App. 2d 326, 335, 224 P.2d 718; and *Rez v. Summers* (1917) 34 Cal. App. 527, 168 P. 156.

- **Leases.** A tenant who was evicted while renting under a fixed-term lease is legally liable to you for the balance of the rent on the lease, less what

you can get from a replacement tenant. (See *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 2.) However, you have to bring a separate lawsuit to recover this amount. The judgment in an unlawful detainer is limited to the rent the tenant owed when served with a three-day notice, plus prorated daily rent up until the date of judgment.

- **Damages.** If, after you obtained a default Judgment for Possession, the tenant stayed past the end of the period for which rent was due, you are entitled to an additional award of “damages at the rate of reasonable rental value” for each day the tenant stayed beyond the initial rental period. You specified the reasonable daily rental value (1/30th of one month's rent) in Item 10 of the Complaint.

**EXAMPLE:** You were a little too patient and didn't serve your three-day notice until the 17th of August. You got a default Judgment for Possession on the 28th, and your tenant was evicted on September 4. You are entitled to a judgment for the \$900 rent for August. In addition, you're entitled to prorated daily damages for each of the four days in September the tenant stayed, at the rate of 1/30th of \$900 or \$30 for each, or \$120. The total is \$1,020.

- **Your court costs.** This does not include things like copy fees or postage, but does include fees you had to pay court clerks, the process server, and the sheriff or marshal.

You cannot get a judgment in this proceeding for the costs of repairing or cleaning the premises, but you can deduct them from the security deposit. (If you collected “last month's rent,” you cannot use that money toward cleaning and damages; see *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 5.) If the deposit won't cover cleaning and repair costs, you'll have to go after the difference in a separate suit in small claims court, or superior court if the costs are high enough to justify it.

You do not need to credit the security deposit when you seek your money judgment. If there is anything left over after you pay for cleaning and repairs, the balance is credited against the judgment after you obtain it, not

before. (For more information on how to itemize and return security deposits, see *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 20.)

**EXAMPLE:** Lola obtained a judgment for \$680, including rent, prorated damages, and court costs. She holds her tenant's \$400 security deposit. The cost of cleaning and repairing is \$200, and Lola subtracts this from the deposit; the remaining \$200 of the deposit is applied against the \$680 judgment, so that the tenant owes Lola \$480 on the judgment.

### Worksheet #1

#### Calculating Amount of Judgment: Eviction Based on Nonpayment of Rent

##### Overdue Rent:

(amount demanded in three-day notice) \$ \_\_\_\_\_

##### Damages:

\_\_\_\_\_ days x \$ \_\_\_\_\_ (daily rental value) = \$ \_\_\_\_\_

##### Court Costs:

\$ \_\_\_\_\_ filing fee

\$ \_\_\_\_\_ process server

\$ \_\_\_\_\_ writ fee

\$ \_\_\_\_\_ sheriff's or marshal's fee \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_



#### 30-day or 60-day notice cases.

You are entitled to:

- Prorated daily “damages” at the daily rental value for each day the tenant stayed beyond the 30-day (or 60-day) notice period. You are not entitled to judgment for any rent or damages that accrued before the 30 days (or 60 days) passed. You can, however, deduct this amount from the security deposit; see Chapter 9. The daily rental value is listed in Item 10 of the Complaint.
- Court costs, including your filing, service of process, writ, and sheriff's or marshal's fees.

**EXAMPLE:** You served Jackson, whose \$900 rent is due on May 15th of each month, with a 60-day termination notice on April 1. This means he is required to leave on May 31. He pays the rent for the period of April 15 through May 14, but refuses

to leave on the 31st and refuses to pay the \$480 prorated rent, due on May 15th, for the period of May 15 through 31 (1/30th of the \$900 monthly rent, or \$30/day, for 16 days). On June 1, you sue on the 60-day notice, and finally get Jackson out on June 25. In this kind of unlawful detainer suit, you are entitled to judgment for prorated daily “damages” only for the period of June 1 (the day after he should have left under the 60-day notice) through June 25 (the day he left), for a total of \$750 (25 x \$30/day), and your court costs. To be paid for the earlier period of May 15 through 31st, you’ll have to either sue him in small claims court (usually not worth the trouble) or deduct it from any security deposit he paid.



#### **Lease violation cases.**

You are entitled to:

- “damages,” prorated at the rate of 1/30th the monthly rent (you listed this figure in Item 10 of the Complaint) for each day beyond the expiration of the three-day notice period that the tenant stayed and for which you haven’t already been paid in the form of rent, and
- court costs—filing, service, and writ fees.

The amount of your money judgment may be quite small, and you may get a judgment only for your court costs, particularly if you accepted the regular monthly rent in advance for the month during which you served the three-day notice.

**EXAMPLE:** Say you accepted the regular monthly rent of \$1,000 from Ron when it was due the first of the month. Two weeks later, Ron begins having loud parties. You give Ron a written warning, but it continues. On the 16th, at the urging of all your other tenants who threaten to move, you give Ron an unconditional three-day notice to quit.

Ron doesn’t move, and you file suit on the 20th and take a default Judgment for Possession on the 26th. The marshal posts a five-day eviction notice on the 28th, giving Ron until the 3rd of the next month before he gets the boot. Ron leaves on the 2nd, so you’re out only two days’ prorated rent or “damages” at the reasonable rental value of \$33.33 per day (1/30th x \$1,000 per month), for a grand total of \$66.66 plus court costs.

If Ron had misbehaved earlier, and you had served the three-day notice only a few days after that, having collected rent on the first of the month, you might even have gotten Ron out before the end of the month. In that case, your judgment would have been for court costs only. Ron isn’t entitled to a prorated refund for the last few days of the month for which he paid but didn’t get to stay, since he “forfeited” his rights under the rental agreement or lease—including any right to stay for days prepaid.



#### **No-notice cases.**

You are entitled to:

- prorated daily “damages” at the daily rental value (you listed this figure in Item 10 of the Complaint) for each day beyond the date of termination of tenancy (either the date the lease expired or the termination date of the 30-day notice the tenant gave you), and
- court costs, including filing, service, and writ fees.

**EXAMPLE:** Hilda sued Sally, whose six-month lease expired June 30. Even if Sally hadn’t paid all the \$900 rent for June, Hilda would be entitled only to prorated daily damages (rental value per day) of \$30 (\$900/30) per day for each day beyond June 30 that Sally stayed in possession of the premises. So, if Hilda got Sally out by July 25, Hilda would be entitled to damages of 25 x \$30, or \$750, plus costs.

**Past due rent.** You cannot seek past-due rent unless the three-day notice was based on nonpayment of rent. So, if Sally hadn’t paid all her rent when it was due in early June, Hilda should have used a three-day notice and the eviction procedure in Chapter 2.

## Worksheet #2

### Calculating Amount of Judgment: Eviction Based on 30-Day or 60-Day Notice, Violation of Lease or No Notice

#### Overdue Rent:

(amount demanded in three-day notice) \$ \_\_\_\_\_

#### Damages:

\_\_\_\_\_ days x \$ \_\_\_\_\_ (daily rental value) = \$ \_\_\_\_\_

#### Court Costs:

\$ \_\_\_\_\_ filing fee

\$ \_\_\_\_\_ process server

\$ \_\_\_\_\_ writ fee

\$ \_\_\_\_\_ sheriff's or marshal's fee \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

## Preparing the Request for Entry of Default (Money Judgment)

You must complete a second Request for Entry of Default to get your money judgment. A sample is shown above.

Fill in the caption boxes the same way you did for the first Request for Entry of Default form. (See above.) This time, though, put an X only in the box next to the words "COURT JUDGMENT." Do not put an X in any other box, not even the "Entry of Default" box, since the defendant's default has already been entered. Then fill in the numbered items as follows.

**Item 1a:** Enter the date you filed the Complaint and your name, just as you did in the first Request for Entry of Default.

**Item 1b:** Type your name.

**Item 1c:** Leave this box blank. The clerk already entered the defaults of the defendants when you filed your first Request for Entry of Default.

**Item 1d:** Put an X in this box. This asks the clerk to schedule a "default hearing" in front of a judge. (Some courts instead accept a written declaration that says what you'd say in front of the judge. See below.) Type the defendants' names.

**Item 1e:** Leave these boxes blank. This is only for a clerk's judgment, and the clerk can't enter a money judgment in an unlawful detainer case.

**Items 2a-f:** In the line entitled "a. Demand of Complaint," list in the "Amount" column the total of rent plus prorated daily damages for any days the tenant stayed beyond the end of the rental period, as calculated above in "Determining Rent, Damages, and Costs."

For example, in the rent nonpayment example above, where the tenant didn't pay the August rent and stayed until September 4, the past-due rent (for August) is \$900, and the damages are \$120 (four September days at \$30—1/30th of \$900), for a total of \$1,020. This sum goes in the "Amount" column.

Don't list anything next to lines b, b(1), or b(2) entitled "Statement of damages." This does not apply to unlawful detainer cases.

Next to "c. Interest" and "e. Attorney fees," enter "0.00." Next to "d. Costs," enter the total of the filing fee, the process server's fee for serving all the defendants, and other court costs tallied in Item 5. (See below.) Total these amounts at Item 2f. Under the "Credits Acknowledged" column, list all amounts and the total as "0.00," since the defendant has not paid you anything. Don't include the security deposit. Finally, under "Balance," list the same amounts as under the "Amount" column.

**Item 2g:** List the same prorated daily rent amount and the same date from which you are asking for prorated daily damages that you did in the original Request for Entry of Default. Then, fill in the date you'll be filing the default papers with the court, type your name opposite the place for signature, and sign the form.

**Item 3:** We have preprinted an "X" in this box, to indicate the case is an unlawful detainer proceeding.

**CAPTION, Second page:** Type the names of the plaintiff and defendant, just as you did on the second page of the Proof of Service of Summons.

**Items 4 and 5:** Fill in these items exactly the same as you did in the original Request for Entry of Default.

**Item 6:** Fill in this item exactly as you did in the first Request for Entry of Default, checking box b and entering the date of mailing of this second one to the defendant's address. (Even though the defendant has moved now, after eviction, that's still his address as last known to you, and it could be forwarded.) Mail copies to the tenants and put "ADDRESS CORRECTION AND FORWARDING REQUESTED" on the envelopes. This will help you locate them when you go to collect your money judgment. (See Chapter 9.)

CIV-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>LENNY D. LANDLORD</b> 12345 ANGELENO STREET LOS ANGELES, CA 90010  TELEPHONE NO: 213-555-6789      FAX NO. (Optional): 213-555-5678 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff in Pro Per	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> <b>LOS ANGELES</b>  STREET ADDRESS: 110 North Grand Avenue MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: CENTRAL DISTRICT/DOWNTOWN BRANCH	
PLAINTIFF/PETITIONER:  DEFENDANT/RESPONDENT:	
<b>REQUEST FOR (Application)</b> <input type="checkbox"/> Entry of Default <input type="checkbox"/> Clerk's Judgment <input checked="" type="checkbox"/> Court Judgment	CASE NUMBER:  <div style="text-align: center; font-size: 1.2em;">A-12345-B</div>

1. TO THE CLERK: On the complaint or cross-complaint filed
- on (date): August 10, 20xx
  - by (name): Lenny D. Landlord
  - ☒ Enter default of defendant (names):  
Terrence D. Tenant, Tillie D. Tenant
  - ☐ I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant (names):
- (Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)
- e. ☐ Enter clerk's judgment
- ☐ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)  
☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The Prejudgment Claim of Right to Possession was served in compliance with Code of Civil Procedure section 415.46.
  - ☐ under Code of Civil Procedure section 585(a). (Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)
  - ☐ for default previously entered on (date):
2. Judgment to be entered.
- |                                  | <u>Amount</u> | <u>Credits acknowledged</u> | <u>Balance</u> |
|----------------------------------|---------------|-----------------------------|----------------|
| a. Demand of complaint . . . . . | \$ 1,260.00   | \$ 0.00                     | \$ 1,260.00    |
| b. Statement of damages *        |               |                             |                |
| (1) Special . . . . .            | \$            | \$                          | \$             |
| (2) General . . . . .            | \$            | \$                          | \$             |
| c. Interest . . . . .            | \$ 0.00       | \$ 0.00                     | \$ 0.00        |
| d. Costs (see reverse) . . . . . | \$ 192.00     | \$ 0.00                     | \$ 192.00      |
| e. Attorney fees . . . . .       | \$ 0.00       | \$ 0.00                     | \$ 0.00        |
| f. TOTALS . . . . .              | \$ 1,452.00   | \$ 0.00                     | \$ 0.00        |
- g. Daily damages were demanded in complaint at the rate of: \$ 30.00 per day beginning (date): Sept. 1, 20xx  
 (\* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)
3. ☒ (Check if filed in an unlawful detainer case) Legal document assistant or unlawful detainer assistant information is on the reverse (complete item 4).

Date: September 12, 20xx

Lenny D. Landlord

(TYPE OR PRINT NAME)

*Lenny D. Landlord*

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

**FOR COURT  
USE ONLY**

- (1) ☐ Default entered as requested on (date):  
 (2) ☐ Default NOT entered as requested (state reason):

Clerk, by \_\_\_\_\_, Deputy

Page 1 of 2

CIV-100

PLAINTIFF/PETITIONER: LENNY D. LANDLORD

CASE NUMBER:

DEFENDANT/RESPONDENT: TERRENCE D. TENANT, ET AL

A-12345-B

4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant ☐ did ☒ did **not** for compensation give advice or assistance with this form.

(If declarant has received **any** help or advice for pay from a legal document assistant or unlawful detainer assistant, state):

- a. Assistant's name: c. Telephone no.:  
 b. Street address, city, and zip code: d. County of registration:  
 e. Registration no.:  
 f. Expires on (date):

5. ☒ **Declaration under Code of Civil Procedure Section 585.5** (required for entry of default under Code Civ. Proc., § 585(a)).

This action

- a. ☐ is ☒ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).  
 b. ☐ is ☒ is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).  
 c. ☐ is ☒ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was

- a. ☐ **not mailed** to the following defendants, whose addresses are **unknown** to plaintiff or plaintiff's attorney (names):  
 b. ☒ **mailed first-class, postage prepaid**, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:

(1) Mailed on (date):

(2) To (specify names and addresses shown on the envelopes):

September 12, 20xx Terrence D. Tenant, 6789 Angeleno Street, Apt. 10, Los Angeles, CA 90012

September 12, 20xx Tillie D. Tenant, 6789 Angeleno Street, Apt. 10, Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.

Date: September 12, 20xx

Lenny D. Landlord

(TYPE OR PRINT NAME)



*Lenny D. Landlord*

(SIGNATURE OF DECLARANT)

7. **Memorandum of costs** (required if money judgment requested). Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

- a. Clerk's filing fees ..... \$ 80.00  
 b. Process server's fees ..... \$ 30.00  
 c. Other (specify): writ fee ..... \$ 7.00  
 d. sheriff's eviction fee ..... \$ 75.00  
 e. **TOTAL** ..... \$ 192.00

- f. ☐ Costs and disbursements are waived.

9. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

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

Date: September 12, 20xx

Lenny D. Landlord

(TYPE OR PRINT NAME)



*Lenny D. Landlord*

(SIGNATURE OF DECLARANT)

8. ☒ **Declaration of nonmilitary status** (required for a judgment). No defendant named in item 1c of the application is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. App. § 501 et seq.).

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

Date: September 12, 20xx

Lenny D. Landlord

(TYPE OR PRINT NAME)



*Lenny D. Landlord*

(SIGNATURE OF DECLARANT)



**Item 7:** This is where you total your court costs. List the clerk's filing fee and your process server's fee in Items 7a and b. In Item 7c, "Other," type in "writ fee" and add the cost of the Writ of Possession. Below that, in Item d, add the sheriff's eviction fee. Total these items at Item 7e. This total should also be listed on Item 2d on the front.

**Item 8:** Date and sign the Declaration of Nonmilitary Status the same way you did on the original Request for Entry of Default.

## Preparing a Declaration as to Rent, Damages, and Costs

Most courts allow you, and many require you, to prepare a written declaration under penalty of perjury in lieu of testifying before a judge at a default hearing. The judge simply reads the declaration's statements about rent, damages, and court costs, and awards you a judgment without a hearing. In the Central Division of Los Angeles County, you must use a declaration; default hearings are not held. If you want to get your money judgment this way rather than attending a default hearing, call the court and ask whether or not it accepts declarations in lieu of testimony in unlawful detainer default cases. If you'd rather testify in person, or if the court doesn't allow declarations, proceed to "Preparing the Proposed Judgment," below.

In January 2003, the Judicial Council wrote an optional, statewide form for this type of declaration. In our opinion it is unnecessarily complex, lengthy, and legally incorrect. Contrary to our opinion of what the law is, this form implies that you must attach originals of certain documents, such as rental agreements and proofs of services of notices (you might not even have these). Worse, it requires you to needlessly fill out even more forms (and perhaps pay additional filing fees) to get permission from a judge to use copies of original documents—that you might not have! Fortunately, this form is optional, so you don't have to use it. If you find this form unworkable or difficult, we recommend instead that you try to use either the typewritten Declaration in Support of Default Judgment form, or improvise your own form, based on the following examples. Landlords using this book have done so since 1986, and courts have accepted the forms without requiring the use of original rental agreements or a complete history of rent

increases.

In the event you want to use this statewide Declaration for Default Judgment by Court form, we include it in the appendix and on the CD-ROM, and give you the following instructions for filling it out.

First, enter the information (name, address, court location, case number, names of plaintiff and defendant) that you listed in the big boxes at the top of the Complaint, Request for Entry of Default, and Writ of Possession forms.

**Item 1:** Check box 1a. Check box 1b(1) if you own the property and the facts of the rental are better known to you than anyone else. If, instead, a property manager or other agent is better informed than you, and is therefore signing this declaration, check box 1b(2) or 1b(3) as appropriate.

**Item 2:** List the complete address of the property.

**Item 4a:** This item asks for the same information you supplied in Items 6a and 6b in the Complaint. Fill in the same information about whether the rental agreement was written or oral, the names(s) of the defendant(s) who signed it, the term of the tenancy, and the initial rent amount and due date.

**Item 4b:** If you have the original rental agreement, or attached it to the Complaint (which we didn't recommend, because you may need the original at trial if the case is contested), check this box. If you attached a copy of the rental agreement to the Complaint and are now going to attach the original to this declaration, check the box next to the words "to this declaration, labeled Exhibit 4b," and attach the original, labeling it "Exhibit 4b" at the bottom.

**Item 4c:** If you do not have an original rental agreement, and did not attach one to the Complaint, you are supposed to check this box and the one next to the words "to this declaration, labeled Exhibit 4c," and attach your copy as "Exhibit 4c." However, if you do this, you are also required, according to this form, to include "a declaration and order to admit the copy." We think this is legally unnecessary and needlessly cumbersome; it's one of the reasons you may choose not to use this badly designed form and use instead the typewritten one. But if you use this form and did not have the original rental agreement or lease, and did not attach a copy of it to the Complaint, then you should prepare a separate page explaining why you do not have the original, followed by the words, "I declare

under penalty of perjury under the law of the State of California that the foregoing is true and correct,” and by the date and your signature. Follow this with a short paragraph stating “IT IS HEREBY ORDERED that the copy of the lease or rental agreement submitted herewith as Exhibit 4c may be admitted,” followed by a signature line labeled “JUDGE OF THE SUPERIOR COURT.” Be prepared to pay the Clerk \$26 for the privilege of using this form and doing it this way.

**Item 5:** If the rental agreement has not changed since its inception (for example, you have not increased the rent, changed the rent due date, or changed any other term of the tenancy), skip this box and go to the second page. Otherwise, check the box and any box for Items 5a through 5f that apply.

If you have increased the rent more than once during the tenancy, you should check box 5a and add a separate Attachment 5a listing a complete history of rent increase, including rent amounts and effective dates, *except for the most recent increase*. As to the most recent increase, check and fill out Item 5b, indicating the rent before and after the increase, and the effective date; you also should check box 5b(1) (tenant paid the increased rent) or box 5b(2) (tenant was served a notice of change of terms of tenancy) as appropriate.

In the rare case of an increase by written agreement, check box 5b(3). If you have the original of such a document, check box 5e and the box next to “to this declaration, labeled Exhibit 5e,” and attach that Agreement, labeled “Exhibit 5e.” If you have only a copy, attach a separate statement under penalty of perjury and a proposed judge’s order to admit the copy. (See similar example for rental agreement copies in instructions for Item 4c, above.) Check box 5f instead of 5e, check the words next to “to this declaration, labeled Exhibit 5f,” and attach the copy labeled “Exhibit 5f.” Again, we think this requirement is unnecessary and cumbersome, and is another reason you might prefer to use the typewritten form.

On the second page, list, in capitals, the plaintiff and defendants’ names and the case number.

**Item 6a:** Fill out Item 6a, referring to the type of notice served on the tenant, the same way you filled out Item 7a of the Complaint.

**Item 6b:** If the notice served was a three-day notice to pay rent or quit, check this box to indicate the rent

demanded in the notice (the same dollar figure as in Item 10 in the Complaint) and the dates of the rental period (this information should be listed on the three-day notice to pay or quit).

**Item 6c:** If the rent demanded in a three-day notice to pay rent or quit is different from the monthly rent, explain why. For example, you might type in: “Monthly rent was \$1,000.00, three-day notice demanded only \$800 due to earlier partial payment on March 4, 20xx.”

**Item 6d:** Check this box and the box next to the words “The original Complaint.”

**Item 7a:** List the name(s) of defendant(s) who were served a three-day, 30-day, or other notice, and the date of service, in the same way you did in Item 8a in the Complaint.

**Item 7b:** Check this box only if you used the optional procedure in Chapter 6 to have a Prejudgment Claim of Right to Possession served on unnamed occupants by a sheriff, marshal, or registered process server. Otherwise, leave this box blank.

**Item 8:** If the three-day notice you attached to the complaint included a filled out Proof of Service at the bottom, check the box next to the words, “the original Complaint.” If not, type a proof of service, using our sample three-day notice’s Proof of Service as a guide, have the person who served the notice sign it, and attach that original as “Exhibit 8b.”

**Item 9:** List the date the three-day, 30-day, or other notice expired. This should be the same date listed in Item 7b of your Complaint.

**Item 10:** List the same daily fair rental value of the property that you listed in Complaint Item 11, and check box b.

**Item 11:** Since you should have waited until after the tenant vacated to fill out this form, check box 11a only, and list the date the tenant vacated.

**Item 12:** Check this box. In Item 12a, list the date you listed in Complaint Item 17f. In Item 12b, again list the date the tenant vacated. In Item 12c, list the number of days between the date in Item 12a and 12b, *including* both those dates. (For example, if the day in 12a is January 10 and the day in 12b is January 15, the number of days is 6, not 5.) In Item 12d, multiply this number of days by the daily fair-rental-value damages amount in Item 10. This amount is called the “holdover damages” figure that goes in Item 15a(2) on the next page.

**Item 13:** Leave this item blank.

Name: LENNY D. LANDLORD  
 Address: 12345 ANGELENO STREET  
 LOS ANGELES, CA 90010  
 Phone: 213-555-1234

**Sample Declaration for Nonpayment of Rent**

Plaintiff in Pro Per

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
LOS ANGELES DIVISION

LENNY D. LANDLORD ) Case No. A-12345-B  
 Plaintiff, )  
 ) DECLARATION IN SUPPORT OF DEFAULT  
 v. ) JUDGMENT FOR RENT, DAMAGES, AND COSTS  
 )  
TERRENCE D. TENANT, et al )  
 Defendant(s). )  
 ) (C.C.P. SECS. 585(d), 1169)

I, the undersigned, declare:

1. I am the plaintiff in the above-entitled action and the owner of the premises at 6789 Angel  
Street, Apartment 10, City of  
Los Angeles, County of Los Angeles, California.

2. On August 1, 20 xx, defendant(s) rented the premises from me pursuant  
 to a written/~~oral~~ [cross out one] agreement under which the monthly rent was \$ 900.00 payable  
 in advance on the first day of each month.

3. The terms of the tenancy [check one]:

☒ were not changed; or  
☐ were changed, effective \_\_\_\_\_, \_\_\_\_\_, in that monthly rent was  
 validly and lawfully increased to \$ \_\_\_\_\_ by ☐ agreement of the parties and subsequent payment  
 of such rent; or

☐ [month-to-month tenancy only] service on defendant(s) of a written notice of at least 30 days, setting forth

the increase in rent.

4. The reasonable rental value of the premises per day, that is, the current monthly rent divided by 30, is \$ 30.00.

5. Pursuant to the agreement, defendant(s) went into possession of the premises.

6. On August 3, 20xx, defendant(s) were in default in the payment of rent in the amount of \$ 900.00, and I caused defendant(s) to be served with a written notice demanding that defendant(s) pay that amount or surrender possession of the premises within three days after service of the notice.

7. Defendant(s) failed to pay the rent or surrender possession of the premises within three days after service of the notice, whereupon I commenced this action, complying with any local rent control or eviction protection ordinance applicable, and caused Summons and Complaint to be served on each defendant. Defendant(s) have failed to answer or otherwise respond to the Complaint within the time allowed by law.

8. Defendant(s) surrendered possession of the premises on September 9, 20xx, after entry of a clerk's Judgment for Possession and issuance of a Writ of Execution thereon.

9. The rent was due for the rental period of August 1, 20xx, through August 31, 20xx. After this latter date, and until defendant(s) vacated the premises, I sustained damages at the daily reasonable rental value of \$ 30.00, for total damages of \$ 270.00.

10. I have incurred filing, service, and writ fees in the total amount of \$ 192.00 in this action.

11. If sworn as a witness, I could testify competently to the facts stated herein.

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

DATED: September, 20xx

Penny D. Landlord  
Plaintiff in Pro Per

Name: LORNA D. LANDLADY  
 Address: 3865 Oak Street  
 Anaheim, CA 92801  
 Phone: 818-555-1234

**Sample Declaration for Violation of Lease**

Plaintiff in Pro Per

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

CENTRAL ORANGE COUNTY JUDICIAL DIVISION

LORNA D. LANDLADY \_\_\_\_\_ ) Case No. 5-0368  
 Plaintiff, )  
 v. ) DECLARATION IN SUPPORT OF DEFAULT  
 ) JUDGMENT FOR DAMAGES AND COSTS  
 )  
 TERESA A. TENANT , et al )  
 Defendant(s). ) (C.C.P. SECS. 585(d), 1169)  
 \_\_\_\_\_ )

I, the undersigned, declare:

1. I am the plaintiff in the above-entitled action and the owner of the premises at 15905 Lafayette Street, Apartment 202, City of Anaheim, County of Orange, California.

2. On September 1, 20xx, defendant(s) rented the premises from me pursuant to a written one-year lease under which the monthly rent was \$900.00 payable in advance on the first day of each month.

The terms of the agreement have not been changed.

3. Pursuant to the agreement, defendants went into possession of the premises.

4. Defendants last paid rent on March 1, 20xx, for March.

5. On March 14, 20xx, Teresa began having loud parties that would begin around noon and last until about 4 a.m. On the 14th, my other tenants began to complain and threaten to move. I went to the apartment above, and the floor was vibrating from all the noise. I knocked at Teresa's door, but apparently no one could hear the knocking, with the music as loud as it was. Finally, I just walked in, found Teresa, and asked her to turn down the music. She did, but she turned it back up when I left. The

1 same thing happened the next two days.

2 6. On March 16, 20xx, I caused defendant to be served with a three-day notice to perform  
3 covenant or quit. She had another party on the 18th and didn't leave on the 19th, so I filed suit on the  
4 20th.

5 7. I obtained a default Judgment for Possession on March 28, 20xx.

6 8. Defendant moved out on the second day of April.

7 9. The damages for the period I didn't receive rent were equal to the prorated daily reasonable  
8 rental value of \$20.00 per day, which for two days is \$40.00. My court costs have been \$80.00 for the  
9 filing fee, \$30.00 process server's fees, \$3.50 for issuance of the Writ of Possession, and \$75.00 to have  
10 the sheriff evict, for a total of \$188.50

11 10. If sworn as a witness, I could testify competently to the facts stated herein.

12 I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
13 and correct.

14 DATED: April 15, 20xx

Lorna D. Landlady  
15 Plaintiff in Pro Per  
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Name: LINDA D. LANDLADY  
 Address: 459 ROSE STREET  
 BERKELEY, CA 94710  
 Phone: 510-555-1234

**Sample Declaration: 30-, 60-, or 90-Day Notice**

Plaintiff in Pro Per

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA  
OAKLAND-PIEDMONT-EMERYVILLE DIVISION

LINDA D. LANDLADY ) Case No. 5-0258  
 Plaintiff, )  
 ) DECLARATION IN SUPPORT OF DEFAULT  
 v. ) JUDGMENT FOR DAMAGES AND COSTS  
 )  
THAD TENANT, et al )  
 Defendant(s). ) (C.C.P. SECS. 585(d), 1169)  
 )

I, the undersigned, declare:

1. I am the plaintiff in the above-entitled action and the owner of the premises at 950 Parker Street  
 \_\_\_\_\_, City of  
Oakland, County of Alameda, California.

2. On February 1, 20xx, defendant(s) rented the premises from me pursuant to  
 a written/~~oral~~ [cross out one] agreement under which the monthly rent was \$ 400.00 payable in  
 advance on the 1st day of each month.

3. The terms of the tenancy [check one]:

- ☒ were not changed; or  
☐ were changed, effective \_\_\_\_\_, \_\_\_\_\_, in that monthly rent was  
 validly and lawfully increased to \$ \_\_\_\_\_ by  
☐ agreement of the parties and subsequent payment of such rent; or  
☐ [month-to-month tenancy only] service on defendant(s) of a written notice of at least 30 days, setting forth

the increase in rent.

4. The reasonable rental value of the premises per day, that is, the current monthly rent divided by 30, is  
\$ 13.33.

5. Pursuant to the agreement, defendant(s) went into possession of the premises.

6. On August 30, 20xx, I served defendant with a written 30-day/ ~~60-day~~  
[cross out one] termination notice.

7. Defendant(s) was still in possession of the property after the period of the notice expired on  
September 30, 20xx, and stayed until October 20, 20xx,  
when the sheriff evicted him/her/them pursuant to a clerk's Judgment for Possession and issuance of a Writ of  
Execution.

8. I sustained damages at the daily reasonable rental value of \$ 13.33 for 21 days  
between September 30, 20xx and October 20, 20xx  
for a total of \$ 279.93.

9. I have incurred filing, service, and writ fees in the total amount of \$ 188.50 in this action.

10. If sworn as a witness, I could testify competently to the facts stated herein.

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

DATED: October 31, 20xx

Linda D. Landlady  
Plaintiff in Pro Per



**Item 14:** Check this box and list your total court costs, consisting of filing fee, cost indicated on returned Summons for service of process, fee for issuance of Writ of Possession, and sheriff's or marshal's eviction fee. This item goes in Item 15a(3), "Costs."

On the top of page 3, again list names of plaintiff, defendant(s), and case number.

**Item 15:** Check Item 15a and list past-due rent from Item 6b, "holdout damages" from Item 12d, and costs from Item 14. Add them for a "total judgment" amount. Leave box 15b blank. If the eviction is based on rent nonpayment or other breach, check the box in Item 15c as applicable—either the one next to "cancellation of the rental agreement" for a month-to-month rental agreement, or "forfeiture of the lease" in the case of a fixed term lease.

Finally, date and sign the document and check any of Items 16 through 23 to indicate what exhibits you've added.

We also include a Los Angeles County form that some courts there require you to use. (Some samples are shown above for a Declaration in Support of Default Judgment form.) If you do your own declaration using our template, prepare it on typed, double-spaced 8½" x 11" legal (pleading) paper with the numbers down the left-hand side.



Blank, tear-out versions of a Declaration in Support of Default Judgment for Rent, Damages, and Costs, and Declaration in Support of Default Judgment for Damages and Costs, are in Appendix 3. The Judicial Council form is also in that appendix. The CD-ROM also includes these forms. Instructions for using the CD are in Appendix 2.

**Evictions based on violation of a lease provision or causing a nuisance.** Such an eviction results in the tenant's "forfeiture" of the right to stay for a period for which he already paid rent. In cases like this, judges are more reluctant to find in your favor, even in a default situation, so you have to be very specific and detailed in your testimony. You must explain how the tenant committed a "material" (serious) breach of the lease, illegally sublet, or committed a nuisance. Otherwise, a judge could rule that the eviction was unfounded, even though you got the tenant out with a Clerk's Judgment and Writ of Possession.

## Preparing the Proposed Judgment

You should prepare a proposed judgment for the judge to sign. That way, you'll be able to simply hand the form to the judge to sign right after the hearing, instead of going home to prepare the judgment and going back to court to leave it for his signature.



A blank, tear-out version of the Judgment—Unlawful Detainer form is in Appendix 3. The CD-ROM includes this form. Instructions for using the CD are in Appendix 2.

The usual information goes in the big boxes at the top of this Judgment form. It's the same information you used on the form for a clerk's judgment for possession.

In the box containing the words "JUDGMENT—UNLAWFUL DETAINER," put an X in the boxes next to the words "By Court Only" and "By Default."

**Item 1:** Put an X in Item 1 next to the words "BY DEFAULT," and also in box 1e next to the words "Court Judgment." Then check box 1e(1) if you will be attending a live default hearing, or box 1e(2) if you will be submitting a written declaration.

**Item 2:** Leave this part blank and proceed to the other side (page 2) of the form. At the top of page 2, fill in the names, in capitals, of the plaintiff (you), the first named defendant (followed by "ET AL" if there is more than one defendant), and the court case number. Also, put an X in the box following the words, "THE COURT," which itself follows the words "JUDGMENT IS ENTERED AS FOLLOWS BY:"

**Item 3:** Put an X in Box 3a and type, in upper and lower case, the name(s) of the plaintiff(s) and the names of all defendants against whom you're obtaining this default judgment for the money owed you. Leave box 3b blank.

**Items 4 and 5:** Leave these items blank, since you already have a judgment for possession of the property from the clerk.

**Item 6:** All the items here are exactly the same as in Item 15 of the statewide Declaration for Default Judgment by Court form. Check boxes 6 and 6a and, in Item 6a(1), (2), and (4), check and list, as applicable, the rent, holdover damages, and costs, and add these for a "total judgment" amount in Item 6a(6). If the eviction is based on rent nonpayment or other breach,

check, in Item 6c, either “The rental agreement is canceled” or “The lease is forfeited,” as appropriate.

**Items 7 and 8:** Leave these blank.

## Submitting Your Papers and/or Going to the Default Hearing

Make one copy of the proposed money judgment for your records, and one copy of the Request for Entry of Default for yourself plus one for each defendant. Mail a copy of the Request for Entry of Default to each tenant, and sign the proof of mailing on the back of the original. If you are submitting a declaration, also make a copy of it. You need to mail each defendant only a copy of the Request for Entry of Default, not a copy of any declaration or proposed judgment.

If you're submitting a declaration, give the original and copies of the Request for Entry of Default and the declaration to the court clerk, who should file the originals and rubber-stamp the copies and return them to you. Also give her the original and copy of the proposed judgment, which she will hold on to for submission to the judge. After a few days, the judge should sign the original, and the clerk will file it and return your copy to you. (To avoid another trip to the courthouse, give the clerk a self-addressed, stamped envelope in which to mail your copy of the judgment.) Once you get the judgment, you will be ready to proceed to Chapter 9 to have the sheriff or marshal collect it.

If you are going to appear before a judge at a default hearing, file only the Request for Entry of Default and ask the court clerk to set a hearing date. In most counties, hearings are held on certain days and times during the week. The defendant is not allowed to participate in the hearing, and therefore is not given any notice of it—she missed the chance to fight by not answering the Complaint within the time allowed.

On the day of the default hearing, take the original and copy of the proposed judgment and go to court a few minutes early. If you're lucky, you may see another landlord testifying before your case is called. When the clerk or judge calls your case, go forward and say to the judge something like, “Good morning, Your Honor, I'm Lenny D. Landlord appearing in pro per.” The clerk will swear you in as your own witness. Some judges prefer that you take the witness stand, but others will

allow you to present your case from the “counsel table” in front of the judge's bench.

You should be prepared to testify to the same kinds of facts that go into written declarations. (See above.) Lenny Landlord's testimony should go something like this:

“My name is Lenny D. Landlord. On January 1, 20xx, I rented my premises at 6789 Angel Street, Apartment 10, to Terrence and Tillie Tenant, the defendants in this proceeding. They signed a rental agreement for a month-to-month tenancy. I have a copy of the rental agreement, which I wish to introduce into evidence as Exhibit No. 1. The rent agreed on was \$850 per month, but on May 31, 20xx, I gave the defendants a 30-day notice that the rent would be increased to \$900 per month effective July 1, 20xx. This amount of rent was paid in July 20xx, but on August 1 the defendants failed to pay the rent for August. On August 3 I served Tillie Tenant with a three-day notice to pay rent or quit. I have a copy of the three-day notice which I wish to introduce into evidence as Exhibit No. 2. They didn't pay the rent and were still in possession on August 8, and I filed this lawsuit on August 9. They left the premises on August 25, but I believe I'm entitled to the rent for all of August.”

If Lenny's tenants hadn't been evicted until, say, September 9, Lenny's last sentence would instead be something like:

“They left the premises on September 9, so I sustained damages at the daily reasonable rental value rate of \$30 for nine days, for damages of \$270, in addition to the \$900 contract rent, for total rent and damages of \$1,170.”

Finally, Lenny might want to add the following testimony about his court costs:

“My court costs have been \$90 for the filing fee, \$30 process server's fee for serving both defendants, \$7.00 for issuance of the original Writ of Possession, and \$75 to have the marshal post the eviction notice, for a total of \$202.”

If you need to call another witness such as an agent who entered into the rental agreement on your behalf or a person who served the three-day notice, tell this to the judge and have that person testify.

The judge may ask you a question or two, but probably won't if you've been thorough. He will then

UD-110	
ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, state bar number, and address:</i> ) LENNY D. LANDLORD 12345 Angeleno Street Los Angeles CA 90010  TELEPHONE NO.: 213-555-6789 FAX NO. ( <i>Optional</i> ): 213-555-5678 E-MAIL ADDRESS ( <i>Optional</i> ): ATTORNEY FOR ( <i>Name</i> ): Plaintiff in Pro Per	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 110 North Grand Avenue MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District/Downtown Branch	
PLAINTIFF: LENNY D. LANDLORD  DEFENDANT: TERRENCE D. TENANT, TILLIE D. TENANT	
JUDGMENT—UNLAWFUL DETAINER  <input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> Possession Only <input type="checkbox"/> Defendant Did Not Appear at Trial	CASE NUMBER:  A-12345-B

## JUDGMENT

1. ☐ **BY DEFAULT**
- a. Defendant was properly served with a copy of the summons and complaint.
- b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
- c. Defendant's default was entered by the clerk upon plaintiff's application.
- d. ☐ **Clerk's Judgment** (Code Civ. Proc., § 1169). For possession only of the premises described on page 2 (item 4).
- e. ☒ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
- (1) ☐ plaintiff's testimony and other evidence.
- (2) ☐ plaintiff's or others' written declaration and evidence (Code Civ. Proc., § 585(d)).
2. ☐ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
- a. The case was tried on (date and time):
- before (name of judicial officer):
- b. Appearances by:
- ☐ Plaintiff (name each):
- ☐ Plaintiff's attorney (name each):
- (1)
- (2)
- ☐ Continued on Attachment 2b (form MC-025).
- ☐ Defendant (name each):
- ☐ Defendant's attorney (name each):
- (1)
- (2)
- ☐ Continued on Attachment 2b (form MC-025).
- c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
- d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

PLAINTIFF: LENNY D. LANDLORD DEFENDANT: TERRENCE D. TENANT, ET AL	CASE NUMBER: A-12345-B
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JUDGMENT IS ENTERED AS FOLLOWS BY: ☐ THE COURT ☐ THE CLERK

3. **Parties.** Judgment is

a. ☒ for plaintiff (*name each*): Lenny D. Landlord

and against defendant (*name each*): Terrence D. Tenant, Tillie D. Tenant

☐ Continued on *Attachment 3a* (form MC-025).  
 b. ☐ for defendant (*name each*):

4. ☐ Plaintiff ☐ Defendant is entitled to possession of the premises located at (*street address, apartment, city, and county*):

5. ☐ Judgment applies to all occupants of the premises including tenants, subtenants if any, and named claimants if any (Code Civ. Proc., §§ 715.010, 1169, and 1174.3).

6. **Amount and terms of judgment**

a. ☒ Defendant named in item 3a above must pay plaintiff on the complaint:

b. ☐ Plaintiff is to receive nothing from defendant named in item 3b.

(1) <input type="checkbox"/> Past-due rent	\$ <span style="border: 1px solid black; padding: 2px;">list rent demanded in any three-day notice</span>
(2) <input type="checkbox"/> Holdover damages	\$ <span style="border: 1px solid black; padding: 2px;">list prorated damages</span>
(3) <input type="checkbox"/> Attorney fees	\$
(4) <input type="checkbox"/> Costs	\$ <span style="border: 1px solid black; padding: 2px;">list court costs—filing, service, sheriff fees</span>
(5) <input type="checkbox"/> Other ( <i>specify</i> ):	\$
(6) <b>TOTAL JUDGMENT</b>	\$ <span style="border: 1px solid black; padding: 2px;">Total</span>

☐ Defendant named in item 3b is to recover costs: \$  
☐ and attorney fees: \$

c. ☐ The rental agreement is canceled. ☐ The lease is forfeited.

7. ☐ **Conditional judgment.** Plaintiff has breached the agreement to provide habitable premises to defendant as stated in *Judgment—Unlawful Detainer Attachment* (form UD-110S), which is attached.

8. ☐ **Other (*specify*):**

☐ Continued on *Attachment 8* (form MC-025).

Date: \_\_\_\_\_  
 JUDICIAL OFFICER

Date: \_\_\_\_\_, Clerk, by \_\_\_\_\_, Deputy

(SEAL)

**CLERK'S CERTIFICATE** (*Optional*)

I certify that this is a true copy of the original judgment on file in the court.

Date: \_\_\_\_\_

Clerk, by \_\_\_\_\_, Deputy

announce the judgment that you should get possession of the property (in effect repeating the part of the judgment you got from the clerk) plus a specified amount of rent/damages, plus costs. Don't be afraid to ask the judge to specify the dollar amount of the court costs. (That way you'll have judgment for them without having to file another form called a Memorandum of Costs.) Also, don't be afraid to politely differ with the judge ("Excuse me, Your Honor, but ...") as to the dollar amount of the rent/damages if you're sure you

calculated the amount correctly—especially if the judge awarded only part of the rent for the first month the tenant didn't pay. You're entitled to the entire amount of unpaid rent that came due at the beginning of the month even if the tenant left before the month's end.

Once the judge gives judgment in your favor, hand the judgment form with the correct amounts filled in to the courtroom clerk, and ask him to file-stamp and return a copy to you. We discuss how to collect the money part of the judgment in Chapter 9. ■



## Contested Cases

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**R**ead this chapter only if the tenant has filed a response to your unlawful detainer Complaint. This chapter outlines how a contested unlawful detainer suit is resolved, either by settlement between the parties or at a trial. The purpose is to give you a solid idea of how a typical case is likely to proceed. We do not, and cannot, provide you with the full guidance necessary to handle all contested unlawful detainer cases to a successful conclusion. But we believe that an overview of the process is necessary whether you hire a lawyer or decide that your particular situation is simple enough that you can do it yourself.



If the tenant has not filed a response to your unlawful detainer Complaint, and you have waited at least five days, you are entitled to seek a default judgment. That procedure is described in detail in Chapter 7.

## What Is Involved in a Contested Eviction Case

Your tenant can complicate your life enormously simply by filing one or two pieces of paper with the court and mailing copies to you. If the tenant files a written response to your unlawful detainer Complaint (whether it is in the form of a motion, demurrer, or answer), you will have to fill out some additional documents and probably appear in court one or more times. All of this will require that you be very much on your toes. As a general rule, judges will not evict a tenant unless every legal “t” and “i” has been scrupulously crossed and dotted. In a contested case, some or all of the following may occur:

- If you or your process server erred in some particular of service, you may have to start from scratch by serving the tenant with a new notice to quit and/or a new Summons and Complaint.
- If the tenant convinces the judge that the Complaint you filed is deficient in some particular, you may have to redraft your Complaint one or more times, without any guidance from the judge.
- If your tenant accuses you, you may have to defend against such charges as:
  - You illegally discriminated against the tenant (for example, the tenant is gay, the tenant is Latino).

- The premises were legally uninhabitable.
- Your eviction is in retaliation against the tenant for complaining to the health authorities or organizing other tenants.
- Your eviction is in violation of the local rent control ordinance.
- You may have to disclose large amounts of business and sometimes personal information to the tenant by answering written questions under oath (interrogatories), producing documents, and allowing the tenant to inspect the premises.
- You may have to appear before a judge (or jury) to argue your case.
- Even if you win, your tenant may be entitled to remain on the premises because of a hardship.
- Even if you win, if you have evicted your tenant for the wrong reasons, you may be setting yourself up for a lawsuit for wrongful eviction.
- If you lose, you’re back to the drawing board and will owe the tenant court costs (and perhaps attorney’s fees, if the tenant was represented by an attorney) and maybe some damages as well.

## Should You Hire an Attorney?

Clearly, you may be in for a good deal of trouble if your tenant contests your suit. Does this mean you should simply give up and hire a lawyer? At the very least, once you become aware of the tenant’s response (and assuming you have not already filed for a default judgment), you should seriously consider locating and hiring an attorney experienced in landlord/tenant matters. Without knowing the particulars of a given contested case, it is impossible to predict whether or not you can safely handle it on your own.

Unless you are extremely experienced in these matters, you should always turn the case over to a lawyer if the tenant:

- is represented by a lawyer
- makes a motion or files a demurrer (these terms are explained below)
- demands a jury trial, or
- alleges any of the following defenses in his answer (discussed in “Preparing for Trial,” below):
  - violation of a rent control ordinance
  - discriminatory eviction

- retaliatory eviction, or
- requests extensive pretrial disclosure of information that you feel would be harmful to disclose.

Understandably, you may be reluctant to turn the case over to a lawyer when you've taken it this far on your own. We're reluctant to recommend lawyers, too. The whole point of this book, after all, is to equip you to handle your unlawful detainer suit yourself. Unfortunately, we can't anticipate and prepare you to deal with every possible defense a tenant's lawyer may throw at you, or for that matter even predict what the tenant will raise in a motion. In short, once you find yourself facing a contested unlawful detainer suit, getting experienced help may be your best, and in the long run most cost-efficient, bet.

## How to Settle a Case

You may negotiate a settlement with a tenant before or even during trial. Although it may not seem true in the heat of battle, it is our experience that considering the usually unpalatable alternative of a trial, it is very often in your economic interest to reach a settlement short of trial. That's why most unlawful detainer cases are settled without a trial.

## Why Settle?

Why is a reasonable—or sometimes even a somewhat unreasonable—settlement better than fighting it out in court? Aside from the possibility that your tenant might win the lawsuit (as well as a judgment against you for court costs and attorney's fees), the time and trouble entailed in going to court often mean you are better off compromising. Even landlords who plow forward to trial and ultimately “win” a court judgment commonly suffer a larger out-of-pocket loss than if they had have compromised earlier. For example, a tenant who refuses to pay the \$1,000 rent on the first of the month will be able to stay anywhere from four to six weeks before having to leave if he properly contests an unlawful detainer case. This means that if the tenant loses the case and is evicted after six weeks, the landlord loses \$1,500 rent in the meantime, plus court costs approaching \$200. If the landlord hires a lawyer, he'll be out at least another several hundred dollars, and probably a good deal more if a full-scale trial develops.

Although these amounts will be added to the judgment against the tenant, the truth is that a great many such judgments are uncollectable. (See Chapter 9.)

Given this unhappy reality, the landlord is usually ahead of the game by accepting a reasonable compromise, even if the tenant gets an unfairly favorable result. Depending on the situation, this may mean that a tenant who has violated a lease or rental agreement provision is allowed to stay on if all past-due rent is paid. Or if the tenant is simply impossible to have around over the long term, the landlord may want to enter into a written settlement agreement under which the tenant agrees to leave within a few weeks in exchange for the forgiveness of some or even all the rent that will have accrued through that time.

No matter what sort of deal you make, if it involves the tenant moving out, it should be in writing, and should provide you with an immediate eviction remedy should the tenant refuse to keep his part of the bargain.

**EXAMPLE:** When Dmitri fails to pay his rent of \$1,000 on May 1, Ivan serves him with a three-day notice. When that runs out without Dmitri paying the rent, Ivan sues Dmitri for an eviction order and the \$1,000. Dmitri contests the suit with an answer that alleges Ivan breached the implied warranty of habitability by not getting rid of cockroaches. Ivan believes this is nonsense because he maintains the building very well, but does concede that the building is old and that tenants have had occasional problems with bugs and rodents. At trial, Ivan will attempt to prove that Dmitri's poor housekeeping caused the cockroaches and that Dmitri never complained about them before filing his Answer. Both Ivan and Dmitri think they will win at trial, but each is sensible enough to know he might lose and that a trial will certainly take up a lot of time, money, and energy. So they (or their lawyers) get together and hammer out a settlement agreement. Dmitri agrees to give Ivan a Judgment for Possession of the property, effective July 1, and Ivan agrees to drop his claim for back rent.

## What Kind of Agreement Should You Make?

There are two ways in which you and the tenant can settle the unlawful detainer lawsuit. You can agree to either of the following:

- You'll file an unconditional entry of a judgment awarding you certain things, like possession of the property and rent, without your having to go back to court again (we'll call this the "unconditional judgment" option).
- You will be entitled to a judgment if the tenant fails to do certain things (such as leave or pay by a certain date), and that a tenant who complies as promised will be entitled to a dismissal of the lawsuit. We'll refer to this second option as the "deferred judgment" option.

Here's the difference between these two approaches: With an unconditional entry of judgment, the tenant agrees that the landlord is entitled to file an unlawful detainer judgment that can be enforced on a certain date. With the deferred judgment option—an agreement that judgment will be entered if the tenant fails to comply as promised (and to dismiss the case if the tenant does comply)—the landlord does not initially have a judgment and must take additional steps to get one if he needs it.

Clearly, the unconditional entry of judgment favors the landlord, because if things go awry, the landlord won't have to go back to court. And an agreement that judgment will be entered only if the tenant fails to comply favors the tenant, because if the tenant does not live up to the conditions, the landlord will have to revive the lawsuit that has been put on hold. Of course, the tenant will also prefer the second route because he'll undoubtedly expect to perform as he promises (to move or pay), and would like to have the lawsuit dismissed, rather than suffer the consequences of having a judgment on file against him.

No matter which route you choose, you'll need to fill out a form called a Stipulation for Entry of Judgment. You'll fill it out differently, however, depending on your choice. Instructions for both ways of completing the form are below.



In previous editions of this book, we called the first type of agreement for an unconditional entry of judgment a Stipulation for Judgment, because under a "stipulation," or agreement, you were automatically entitled to a judgment. We referred to the second kind of agreement as a Settlement Agreement. Effective January 2003, a new Judicial Council form called a Stipulation for Entry of Judgment can be used to reflect either of these

types of agreements. Because of the potential for confusion between the Stipulation for Entry of Judgment form and the term "Stipulation for Judgment," we no longer use this latter term.

## How to Negotiate With a Tenant

Here are some thoughts on negotiating with a tenant you are trying to get out:

- Be courteous, but don't be weak. If you have a good case, let the tenant know you have the resources and evidence to fight and win if you can't reach a reasonable settlement.
- Don't get too upset about how the tenant is using the system to get undeserved concessions out of you, and don't be so blinded by moral outrage that you reject workable compromises. At this point you want to balance the costs of a settlement against the costs of fighting it out and choose the less expensive alternative. If this sometimes means that a rotten tenant gets a good deal, so be it. The alternative, your getting an even worse deal from California's court system, is even less desirable.

For advice on negotiating techniques, see *Getting to Yes: Negotiating Agreements Without Giving In*, by Fisher and Ury, of the Harvard Negotiation Project (Penguin).

## Designing an Agreement for the Deferred Judgment Option

For the reasons just explained, we do not recommend that you choose the second, deferred judgment option unless there are some very solid reasons why you think the tenant will deliver on his promises. If you go that route, however, keep in mind that you're offering a substantial benefit to the tenant: the opportunity to avoid the negative mark of an eviction judgment on his credit record, which will haunt him for years. In exchange for your agreement to dismiss the lawsuit if he performs, be sure that there is a fair trade-off, such as your getting an immediate, substantial payment of cash. If he doesn't come through and you're forced to file for a judgment, you'll have just that—a mere judgment for money can be hard to collect.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and state bar number, and address):		<b>FOR COURT USE ONLY</b>
LENNY D. LANDLORD 1234 ANGELENO STREET LOS ANGELES, CA 90010 TELEPHONE NO.: 213-555-6789 FAX NO. (Optional):		
E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff in Pro Per		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b> STREET ADDRESS: 110 North Grand Avenue MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: CENTRAL/DOWNTOWN		
PLAINTIFF: LENNY D. LANDLORD  DEFENDANT: TERRENCE D. TENANT, ET AL		
<b>STIPULATION FOR ENTRY OF JUDGMENT (Unlawful Detainer)</b>		
		CASE NUMBER:  A-12345-B

- Page 1 of 2

PLAINTIFF: LENNY D. LANDLORD  
 DEFENDANT: TERRENCE D. TENANT, ET AL

CASE NUMBER:  
 A-12345-B

7. ☐ Plaintiff and defendant further stipulate as follows (*specify*):

8. a. **The parties named in item 1 understand that they have the right to (1) have an attorney present and (2) receive notice of and have a court hearing about any default in the terms of this stipulation.**

b. Date: Sept. 8, 20xx

LENNY D. LANDLORD

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

☐ Continued on *Attachment 8b* (form MC-025).

c. Date: Sept. 8, 20xx

TERRENCE D. TENANT

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

TILLIE D. TENANT

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

☐ Continued on *Attachment 8c* (form MC-025).

9. IT IS SO ORDERED.

Date:

JUDICIAL OFFICER

You should also avoid agreements under which the tenant promises to pay a past-due rent in future installments. Even if the agreement says you get a judgment for possession if the tenant fails to pay the installments, you'll still have to file papers and go back to court to get a judgment for the amount of the unpaid installments.

### Completing the Stipulation for Entry of Judgment Form

Whether you and the tenant agree that you can file a judgment right now, or decide that you will file one only if the tenant fails to perform as promised, you'll need to complete and file a form. Here are instructions for both routes. On the preceding pages is a filled-out sample Stipulation for Entry of Judgment form.



A blank Stipulation for Entry of Judgment is included in Appendix 3, together with a Judgment—Unlawful Detainer Attachment (Form UD-110S), which you might use as an attachment to this form in certain situations (see Item 6c instructions, below). If you pursue an unconditional judgment or a deferred judgment, you will not need a separate Judgment Pursuant to Stipulation (the stipulation becomes the judgment when the judge signs it).

By now, you're familiar with the beginning parts of these forms. As with all Judicial Council forms, in the boxes at the top of the form list your name, address, and telephone number; the words "Plaintiff in Pro Per"; the court, county, court address, and branch, if applicable; and names of the plaintiff and defendants, as well as the case number.

**Item 1:** List your name and the names of the defendants who will be signing this stipulation.

**Item 2:** If the tenant will be vacating the property, put an X in the box next to the word "Plaintiff." Do not put an X in the box next to the word "Defendant," unless the tenant will be staying in possession of the premises, presumably after having come up to date on the rent that will accrue through the current month or other rental period, plus your court costs, paid immediately in cash or by cashier's or certified check or money order.

**Item 2a:** List the complete address of the property, including street address; unit number, if any; city; and county.

**Item 2b:** If the tenant will be vacating the property, put an X in the box next to either the words "cancellation of the rental agreement" or "forfeiture of the lease," as applicable.

**Items 2c–2:** If the tenant will be paying past-due rent, and/or prorated daily damages, put Xs where appropriate and indicate the dollar amount(s) in these items.

**Item 2f:** If the tenant will also be paying your court costs, put an X in this box and indicate the amount.

**Item 2g:** If you are stating in Item 2 that you, the plaintiff, are awarded the things listed, and you agree that you will not have to return the tenant's security deposit to him or her, put an X in this box and indicate the dollar amount of the deposit. (Avoid agreeing to this, if possible, because it will leave you without any funds to claim or repair the premises, after the tenant has vacated.)

**Item 2i:** Add up the dollar amounts in Items 2c, 2d, 2f, and 2g.

**Item 3:** If you have declined to agree (as we suggest in the instructions for Item 2g, above) to apply the tenant's security deposit before he or she moves out, then you should check box 3a or 3b, indicating the deposit will be subject to proper deductions (for cleaning and damages) in the normal fashion. We recommend negotiating for a promise to return and/or itemizing the tenant's security deposit within three weeks after he or she vacates the premises, since that allows you a fund from which to deduct the costs of any necessary cleaning or repairs in excess of ordinary wear and tear, and allows you the time ordinarily allowed by law to do this. If, on the other hand, all you can negotiate for is to return a certain dollar amount of the deposit to the tenant by a certain date, then check box 3a and indicate the dollar amount of the deposit and date. In either case, if box 3a or 3b is checked, you should check the items in box 3c to indicate the tenant's mailing address, to which you will be mailing the deposit and/or itemization.

**Item 4:** Check the box that gives you an immediate writ of possession. If the tenant will not be moving prior to a certain agreed date, you should still put an X in this box, and indicate that date. This allows you to agree that the tenant may stay in the premises until a certain date, and to have him or her evicted the next day if the tenant fails to move. For example, if the tenant agrees to vacate by June 15, with that date

specified in Item 4, you can have the clerk issue a Writ of Possession and give it to the sheriff on June 5, with appropriate instructions “to conduct final lockout and delivery of possession of premises to me on or after June 15, 20xx.” This is important because, otherwise, there will be a delay of at least one week between the time you give the sheriff the Writ of Possession, and the time the tenant will have to leave.

**Item 5:** If you agree the tenant will pay a certain sum in monthly installments, this is the place to indicate that the tenant will pay a certain dollar amount each month, on a certain day of the month, until the amount listed in Item 2i has been paid. You can also specify that if any payment is more than a certain number of days later, the entire amount listed in Item 2i becomes due.

**Items 6a and 6b:** Whether you check box 6a or 6b is one of the most important aspects of this stipulation. Check box 6a if you have been able to negotiate an unconditional judgment, hopefully one that says that you will be entitled to possession of the premises, whether by a certain date or immediately. If, on the other hand, you are merely entering into an agreement for judgment entered in the future, if the tenant fails to comply with certain conditions (such as failure to pay rent installments as promised in Item 5), then box 6b should be checked. In that case, you will also have to fill out a date, time, and court department, approved by the judge, for the case to be dismissed, in the event the tenant complies with all the provisions of this type of agreement.

**Item 6c:** Sometimes an actual judgment, which has certain conditions, can be entered. We’ve characterized this as a hybrid; you enter the judgment now, but it doesn’t take effect until later, and only if the court finds that the conditions have been met. This type of judgment, however, is about as cumbersome to the landlord as is the agreement for entry of judgment in the future if certain conditions have not been met by the tenant. You can probably see why: It involves another trip to the courthouse. With this type of judgment, you’ll need to set a future date for a court hearing, to determine whether the conditions have or have not been met. If you want this kind of conditional judgment, check box 6c, fill out another form called a Judgment—Unlawful Detainer Attachment (Form UD-110S), and attach it to the Stipulation for Entry of Judgment form. We include a blank form of this type in Appendix 3 and on the CD-ROM, but because we

do not recommend this path, we have not included instructions on completing it.

**Items 6d and 7:** If you and the tenant agree on additional terms, which are not easily adapted to this form, you should check both these boxes, and indicate those terms in Item 7 on the reverse side (page 2) of the form.

**Item 8:** In Items 8b and 8c, enter the date the stipulation is signed, together with the printed names and signatures of all plaintiffs and all defendants.

Once the form is filled out and signed by all parties, submit it to the judge, who should sign, date, and file it. If box 6a is checked, this document will be the equivalent of an unconditional judgment. However, if box 6b or 6c is checked, you might need to schedule further court hearings, or to file declarations under penalty of perjury, in order to proceed further. If box 6b is checked and you end up back in court, you also will need to submit a separate judgment along with a written declaration under penalty of perjury, to the effect that the tenant has not complied with the agreement.

## Appearing in Court

Regardless of which type of stipulation you are able to negotiate with the tenant, the law recognizes only two ways that stipulations can become binding. Either the terms must be recited in “open court” in front of a judge, or they must be in writing. In many ways, a written agreement is preferable, because it leaves no doubt as to what was agreed to. But most tenants will not seriously negotiate until they’re at the courthouse, face to face with you, about to start trial in a few minutes if there’s a failure to agree. If you’re facing someone who won’t even talk to you, it’s often impossible to prepare a completed written stipulation beforehand.

You may, however, be able to begin negotiations and even come to a partial agreement with the tenant before going to court. If so, it’s a good idea to at least fill in the boxes at the top of the form, including the names of the parties in Items 1, 2, and 8, and the address of the premises in Item 2. Finish as much of the remainder as you can, to reflect the extent of the settlement that’s been agreed to. Bring an original and several copies to court with you on the day of trial. If you finalize your settlement at the courthouse and can complete the form neatly in ink as the terms are negotiated, you may be able to present it to the judge for signature and get it filed (some judges insist on typed forms). If the judge

Stipulations for Entry of Judgment			
Type	When judgment is entered in court	What happens if tenant doesn't move?	Filling out the form
Unconditional Judgment	As soon as the judge signs the form, in Item 9 ("IT IS SO ORDERED"), the form becomes an unconditional judgment.	Landlord can ask sheriff to evict (see instructions to Item 4)	Check box 6a.
Deferred Judgment	When the landlord establishes in court that the tenant hasn't complied with the agreement, the judge will sign the order.	The landlord will have to appear in court at a later date, or file a declaration under penalty of perjury, stating how the tenant has failed to live up to the agreement, and will have to submit a separate proposed judgment.	Check box 6b.
Conditional Judgment	The judgment will be entered after a court hearing in which the landlord convinces the judge that the tenant did not comply.	The landlord initiates the hearing.	Check box 6c, but this method is not recommended.

won't accept it, you must recite its terms in court, in front of a judge, while the proceedings are tape-recorded or a court reporter takes everything down.

Those of you who are dealing with tenants who won't negotiate prior to trial may find that the stomach-churning prospect of starting trial will convince a tenant to negotiate and settle. It won't hurt to be prepared—fill out parts of the stipulation form as directed above and hope for the best. If you reach an agreement and the court will accept a neatly hand-filled form, great. If the court refuses your form, recite the terms in court, before a court reporter or in the presence of a tape recorder.



Unless the tenant(s) and the judge have accepted and signed a written Stipulation for Entry of Judgment, or you at least have the terms of the settlement "on the record," taken down by a court reporter or tape recorded, do not tell the judge you have settled the case. Do not agree to "drop" the matter or take it "off calendar."

## The Tenant's Written Response to an Unlawful Detainer Complaint

Sooner or later you will receive a copy of the tenant's written response to your unlawful detainer Complaint. This response can take several forms. Let's discuss these

in the order of their likelihood, assuming the tenant has a lawyer or is well-informed about responding to unlawful detainer Complaints.

### Motions as Responses to an Unlawful Detainer Complaint

A tenant can object to something in your Summons or Complaint by filing a response which, rather than answering the Complaint allegations, simply asserts that the Complaint isn't technically up to snuff. It is common for tenants to bring these types of issues to the attention of the court (and thus obtain delay) in the form of a request called a motion. A motion is a written request that a judge make a ruling on a particular issue, before any trial occurs. Once a motion (or motions) are filed with the court, the case will automatically be delayed by several weeks because the tenant doesn't have to respond to the substance of your Complaint until the procedural questions raised in the motion (or motions) are cleared up.

For example, a tenant (or her attorney) could file a motion to "quash service of Summons," in which the judge is asked to state that the Summons wasn't properly served, and to require the landlord to serve it again, properly. A court hearing to consider the merits of the motion will normally be held between one and two weeks after filing.



Or a tenant who believes a landlord's request for extra "statutory damages" due to the tenant's malicious conduct isn't backed up by enough allegations of ill-will on the tenant's part can make a motion to have the judge "strike" (consider as deleted) the request for statutory damages from the unlawful detainer Complaint.

To have any motion heard by a judge, a tenant files a set of typewritten papers. The first paper is a notice of motion, which notifies you of the date and time the motion will be heard and summarizes the basis ("grounds") for the motion. The second paper is a short legal essay called a memorandum of points and authorities, stating why the tenant should win the motion. Motions sometimes also include a "declaration" in which the tenant states, under penalty of perjury, any relevant facts—for example, that the tenant wasn't properly served with the Summons.

From the landlord's point of view, the worst thing about a tenant's motion is not that the judge might grant it, but that it can delay the eviction for at least several weeks, during which the tenant will not be paying rent. This is true even if the tenant loses the motion. Motions generally can be heard no sooner than 26 days after the tenant files the motion papers and mails copies of them to the landlord. (C.C.P. §§ 1177 and 1005.) One exception is motions to quash, which under C.C.P. § 1167.4(a) must be heard no later than seven days after filing.

Before the hearing, the landlord should file a written response arguing that the tenant's motion should be denied. The judge will read both sides' papers in advance and will allow limited discussion by each side at the hearing, perhaps asking a few questions. The judge then rules on the motion. If the motion is denied, the judge will require the tenant to file an Answer to the Complaint within five days.

Here is a brief discussion of the kinds of motions commonly filed in unlawful detainer cases.

### The Motion to Quash

Officially called a "motion to quash Summons or service of Summons," this motion alleges some defect in the Summons or the way it was served. (If the defect is in the way it was served on one tenant, only that tenant may make this kind of motion.) If the judge agrees, the case is delayed until you have a new Summons served on the tenant. Typical grounds for a tenant's motion to

quash, based on defective service include any of the following:

- The Summons was served on one defendant but not the other.
- The wrong person was served.
- No one was served.
- The process server didn't personally serve the Summons as claimed in the Proof of Service (and instead mailed it, laid it on the doorstep, or served it in some other unauthorized manner).
- You, the plaintiff, served the Summons.

Grounds based on a defect in the Summons itself include either of the following:

- The wrong court or judicial district is listed.
- The Complaint requests sums not awardable in an unlawful detainer action, such as pretermination rent in a 30-day or 60-day notice case, utility charges, or late security deposit installments; this makes the case a regular civil action in which a different Summons giving more than five days to respond is necessary. (*Greene v. Municipal Court* (1975) 51 Cal. App. 3d 446; *Castle Park No. 5 v. Katherine* (1979) 91 Cal. App. 3d Supp. 6; *Saberi v. Bakhtiari* (1985) 169 Cal. App. 3d 509.)

If the motion to quash is based on allegations that can logically be responded to by your process server, he will have to appear at the hearing on the motion to testify to when, where, and how the papers were served. For instance, if the tenant's motion to quash states that the Summons and Complaint were served solely by first-class mail (which is not permitted), you would need your process server to testify as to how the papers were, in fact, served. Before the hearing, you should file with the court clerk the Proof of Service (on the back of the original Summons) that the process server filled out.



If you encounter a motion to quash, you will need the assistance of an attorney unless, of course, you are able to interpret and contest the tenant's motion papers and know how to file and serve your response papers and argue the motion in a court hearing.

### Motion to Strike

A motion to strike asks the judge to strike (delete) all or part of a Complaint. For example, if your unlawful detainer Complaint asks for additional statutory

damages based on the tenant's "malice," but without alleging any specific facts that tend to show the tenant's malicious intent, the tenant may make a motion to strike the statutory damages request from the Complaint. If the judge grants the motion, it doesn't mean that the judge or clerk goes through your Complaint and crosses out the part objected to, but the case is treated as if that had been done.

Motions to strike are heard no sooner than 21 days after the tenant files the motion, which means that, win or lose on the motion, you lose three weeks.

Other defects in the Complaint that might subject it to a tenant's motion to strike include:

- a request for attorneys' fees, if you don't allege a written rental agreement or lease that contains an attorneys' fees clause
- a request for prorated daily damages at the reasonable rental value without an allegation of the daily rental value
- a request for something not awardable in an unlawful detainer action (see motions to quash, above), or
- your failure to "verify" (sign under penalty of perjury) the Complaint (this could result in a successful motion to strike the entire Complaint).

How you should respond to a motion to strike depends on the part of your Complaint objected to, but in most cases you can shorten the delay caused by the motion by simply filing and serving an "amended Complaint" that corrects your errors. After that, you must make a motion to be allowed to file another amended Complaint. (C.C.P. § 472.) Telling you how and when to file an amended Complaint is beyond the scope of this book. However, you can only amend the Complaint once without special permission from the judge. If you do this, you render the motion to strike moot and should be able to proceed with your unlawful detainer without waiting for a hearing.

Assuming there is a hearing on the motion to strike, the judge will decide whether or not to strike the material the tenant objects to. Once this is done, the tenant has to file an Answer within the time allowed by the judge, usually five days.

You may get a default judgment if the Answer isn't filed by that time. (See Chapter 7.)

## Demurrers

A "demurrer" is a written response to an unlawful detainer Complaint that claims that the Complaint (or the copy of the three-day, 30-day, or 60-day notice attached to it) is deficient in some way. When a tenant files a demurrer, he is really saying, "Assuming only for the purpose of argument that everything the landlord says in the Complaint is true, it still doesn't provide legal justification to order me evicted." When this is the case, it's usually because the Complaint (including attachments) itself shows that the landlord has not complied with the strict requirements for preparation and service of the three-day, 30-day, or 60-day notice. For example, if the attached three-day notice doesn't demand that the tenant pay a specific dollar amount of rent or leave within three days, it's obvious from the Complaint alone that the tenancy has not been properly terminated, and that the tenant therefore should win.

Typical objections directed to the attached three-day, 30-day, or 60-day notice by a demurrer include any of the following:

- not stating the premises' address, or stating an address different from that alleged elsewhere in the Complaint
- stating an amount of rent more than that alleged elsewhere in the Complaint as past due
- including in the termination notice charges other than rent, such as late fee charges, or
- alleging that the notice was served before the rent became past due.

Objections directed at the unlawful detainer Complaint itself include:

- failure to check boxes containing essential allegations, such as compliance with rent control or just cause eviction ordinances, or
- allegation of contradictory statements.

Demurrers can often be more technical than motions to quash or strike. If a successful demurrer is based on a defect in the notice attached to the Complaint, you could wind up not only having the eviction delayed, but also with a judgment against you for court costs and attorney's fees. It is for this reason (and because we simply can't predict the content of any particular demurrer) that we tell you to consult an attorney if you are faced with one.

## The Tenant's Answer

Sooner or later, if you adequately respond to any motions or demurrer filed by the tenant, the tenant will be required to respond to the substance of your Complaint. This response is called the Answer. It will finally let you know what aspects of your case the tenant plans to contest and what other arguments, if any, the tenant plans to advance as to why she thinks you should lose (called “affirmative defenses”).

Like your unlawful detainer Complaint, the tenant's Answer is usually submitted on a standard fill-in-the-boxes form. (It can also be typed from scratch on 8½" x 11" paper with numbers in the left margin, but this is increasingly rare.) A typical Answer is shown below.

Here is what you need to pay attention to in the tenant's Answer.

### The Tenant's Denial of Statements in the Complaint

The first part of the Answer with which you must concern yourself is Item 2. Here, the defendant denies one or more of the allegations of your Complaint. If box 2a is checked, this means that the tenant denies everything you alleged.

At trial, you will have to testify to everything you alleged in the Complaint: ownership, lease or rental agreement existence, rent amount, rent overdue, service of three-day notice, refusal to pay rent, and so on.

If box 2b is checked, the space immediately below should indicate which, if any, of your allegations is denied, either by specific reference to the numbered allegation paragraphs in your Complaint or in a concise statement. At trial, you will be required to offer testimony or other evidence as to any of your allegations the tenant denies.

For example, in the sample Answer, Terrence and Tillie Tenant deny the allegations of paragraphs “6d, 7a(1), 7b(1), 8a(1), 10, and 11” of Lenny Landlord's Complaint. This means Lenny has to go back and look at his Complaint to see exactly what Terrence and Tillie are denying. He would find that the allegations denied are:

- that Lenny changed the rental agreement by increasing the rent (Complaint Item 6d)
- that a three-day notice to pay rent or quit was served (Item 7a(1))
- that the notice expired on August 8 (Item 7b(1))

- that any such notice was served on the date Lenny indicated (Item 8a(1))
- that the rent due was \$900 (Item 10), and
- that the fair rental value is \$30 per day (Item 11).

This means that Lenny will, at the very least, have to have the person who served the three-day notice testify in court that she in fact served it. Lenny, himself, will have to testify about when he last received the rent and how much the tenants owed when the notice was served.

### The Tenant's Affirmative Defenses



If none of the boxes in Item 3 of the Answer are checked, skip this discussion and go directly to “Other Things in the Answer,” below.

In addition to responding to the landlord's statements in the Complaint, the tenant is entitled to use the Answer to make some of his own. These statements (in Item 3 of the Answer) are called “affirmative defenses.” The tenant checks the boxes next to any applicable defenses and explains the relevant facts in some detail in Item 3j (on the reverse).

If an affirmative defense is proved by the tenant to the satisfaction of a judge, the tenant wins, even if everything you said in the unlawful detainer Complaint is true. The duties imposed on you by law, the breach of which can give rise to these defenses, are discussed in detail in *Volume 1*. Below, we discuss when you may need an attorney to help you handle a defense, and, if you decide to go it alone, how you will need to respond at trial.



If you are still representing yourself, but upon inspecting the Answer (Item 3) discover that an affirmative defense is being raised, now is the time to start looking for help. You should at least consult an attorney to assess the probable strength of the tenant's case—even if you think the affirmative defense is untrue or just a bluff. We are reluctant to advise a consultation with a lawyer solely because an affirmative defense is raised by the tenant. However, please understand that by making such a response, the tenant is warning you that he has something in mind that may torpedo your case. If you proceed on your own and later are unable to handle the defense, all your hard work up to this point may go down the drain.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): — TERRENCE D. TENANT, TILLIE D. TENANT P.O. Box 12345 Los Angeles, CA 90010 ATTORNEY FOR (Name): Defendants in Pro Per	TELEPHONE NO.: 213-555-6789	<b>FOR COURT USE ONLY</b>
NAME OF COURT: SUPERIOR COURT OF CALIFORNIA, COUNTY STREET ADDRESS: OF LOS ANGELES MAILING ADDRESS: 100 North Grand Avenue CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: CENTRAL/DOWNTOWN		
PLAINTIFF: LENNY D. LANDLORD DEFENDANT: TERRENCE D. TENANT, TILLIE D. TENANT		
<b>ANSWER—Unlawful Detainer</b>		CASE NUMBER: A-12345-B

1. Defendant (names): Terrence D. Tenant, Tillie D. Tenant

answers the complaint as follows:

2. Check **ONLY ONE** of the next two boxes:

a. ☐ Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000).

b. ☒ Defendant admits that all of the statements of the complaint are true EXCEPT  
 (1) Defendant claims the following statements of the complaint are false (use paragraph numbers from the complaint or explain):

6d, 7a(1), 7b(1), 8a(1), 10, 11

☐ Continued on Attachment 2b(1).

(2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (use paragraph numbers from the complaint or explain):

☐ Continued on Attachment 2b(2).

3. AFFIRMATIVE DEFENSES (NOTE: For each box checked, you must state brief facts to support it in the space provided at the top of page two (item 3j).)

a. ☒ (nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.

b. ☐ (nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.

c. ☐ (nonpayment of rent only) On (date): , before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.

d. ☐ Plaintiff waived, changed, or canceled the notice to quit.

e. ☐ Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.

f. ☐ By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or laws of the United States or California.

g. ☐ Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):

(Also, briefly state the facts showing violation of the ordinance in item 3j.)

h. ☐ Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.

i. ☐ Other affirmative defenses are stated in item 3j.

(Continued on reverse)

PLAINTIFF (Name): LENNY D. LANDLORD	CASE NUMBER: A-12345-B
DEFENDANT (Name): TERRENCE D. TENANT, et al	

## 3. AFFIRMATIVE DEFENSES (cont'd)

j. Facts supporting affirmative defenses checked above (identify each item separately by its letter from page one):

Plaintiff failed, after repeated demands, to repair a defective heater, a bathroom toilet that will not flush, a leaky roof, and a severe cockroach infestation.

(1) ☐ All the facts are stated in Attachment 3j. (2) ☐ Facts are continued in Attachment 3j.

## 4. OTHER STATEMENTS

- a. ☐ Defendant vacated the premises on (date):  
 b. ☒ The fair rental value of the premises alleged in the complaint is excessive (explain): For reasons set forth in Item 3j above, the reasonable rental value is only \$300.00 per month.  
 c. ☐ Other (specify):

## 5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.  
 b. costs incurred in this proceeding.  
 c. ☐ reasonable attorney fees.  
 d. ☒ that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.  
 e. ☐ other (specify):

6. ☐ Number of pages attached (specify):

## UNLAWFUL DETAINER ASSISTANT (Business and Professions Code sections 6400-6415)

7. (Must be completed in all cases) An unlawful detainer assistant ☐ did not ☐ did for compensation give advice or assistance with this form. (If defendant has received any help or advice for pay from an unlawful detainer assistant, state):

- a. Assistant's name: b. Telephone No.:  
 c. Street address, city, and ZIP:

d. County of registration:

e. Registration No.:

f. Expires on (date):

Terrence D. Tenant  
 (TYPE OR PRINT NAME)

▶ Terrence D. Tenant  
 (SIGNATURE OF DEFENDANT OR ATTORNEY)

Tillie D. Tenant  
 (TYPE OR PRINT NAME)

▶ Tillie D. Tenant  
 (SIGNATURE OF DEFENDANT OR ATTORNEY)

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

## VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 15, 20xx

Tillie D. Tenant  
 (TYPE OR PRINT NAME)

▶ Tillie D. Tenant  
 (SIGNATURE OF DEFENDANT)

Here is a brief description of each affirmative defense that may be raised in the Answer.

### **Item 3a: Breach of Warranty of Habitability**

In suits based on nonpayment of rent, this defense asserts that the tenant should be excused from paying all the rent because of your failure to keep the place in good repair. (See *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 11.) Technically, the habitability defense should not be raised in suits based on reasons other than nonpayment of rent. If a tenant does assert it improperly, you should object at trial.

### **Item 3b: Repair-and-Deduct Defense**

As discussed in *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 11, state statute forbids an eviction within six months after the exercise of the tenant's "repair-and-deduct" rights unless the notice to quit states a valid reason for the eviction and the landlord proves the reason in court if the tenant contests it. Even if you think the tenant's deduction was improper, be prepared to prove a valid reason (under the repair-and-deduct statute) for the eviction.

### **Item 3c: Refusal of Rent**

If you gave the tenant a Three-Day Notice to Pay Rent or Quit, you must accept rent offered during the three-day notice period. This defense is occasionally used when a tenant's offer of a check is rejected by the landlord during the three-day period because of a requirement that payment be made by cash or money order—usually, after a few bounced checks. As long as you insisted on being paid by cash or money order well before the time that the tenant insists on using the check (and can document this), you should be able to beat this defense. (See *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 3.)

This point is often mistakenly raised by tenants when landlords properly refuse rent after the applicable notice period expired. Once the judge understands that the rent was offered only after the three-day period, and not before, you should prevail.

### **Item 3d: Waiver or Cancellation of Notice to Quit**

If the landlord acted in a way that was somehow inconsistent with the three-, 30-, or 60-day notice, the notice may effectively be cancelled. For example, if your three-day notice complained about the rent not

being paid on the first of the month, but you'd accepted it on the fifth every month for the past year, you might have given up or "waived" the right to complain. Another example would be your acquiescing for several months to the tenant's breach of the no-pets lease clause and then serving the tenant with a Three-Day Notice to Perform Covenant or Quit that says the tenant must get rid of the pet or leave within three days. Item 3d might also be checked if the tenant claims you accepted or agreed to accept rent later than the notice deadline. (See Chapter 2 for a discussion of the consequences of accepting rent after serving a three-day notice, and Chapter 3 regarding acceptance of rent following service of a 30-day notice terminating a month-to-month tenancy.)

### **Item 3e: Retaliation**

This alleges that your true reason for serving a notice—usually a 30- or 60-day notice terminating a month-to-month tenancy—was to retaliate for the tenant's exercise of a specified legal right. Retaliation is often claimed by tenants who have complained to local government authorities about housing conditions, or who have attempted to organize your other tenants. (See *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 15.)

### **Item 3f: Discrimination**

This defense refers to discrimination prohibited under state and federal law. (See *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 9, for a discussion of this complex topic.)

### **Item 3g: Violation of Rent Control Ordinance**

Many rent control ordinances not only limit the amount of rent you may charge, but also have "just cause eviction" provisions that limit your freedom to terminate a month-to-month tenancy. Your tenant can defend the lawsuit based on your failure to comply with any aspect of the ordinance, including:

- property registration requirements
- rent limits, or
- special requirements for three-day, 30-day, or 60-day eviction notices.

Cities that require registration of rents (Berkeley, Santa Monica, East Palo Alto, Los Angeles, Palm Springs, Thousand Oaks, and West Hollywood) must limit the sanctions against landlords who are in "substantial

compliance” with a rent control law and made only a good-faith mistake in calculating rent or registering property with the local rent control agency. (Civ. Code § 1947.7.) The statute appears to apply only to sanctions imposed by local rent control agencies, however. You should still expect to have your Complaint dismissed if it is based on a three-day notice that demanded an amount of rent that was illegal under a rent control ordinance.

### Item 3h: Acceptance of Rent

If you accepted rent for a period beyond the termination date in a termination notice, you may have revoked that notice. For example, if rent is due in advance on the first of each month, and you gave your tenant a 30-day notice on June 15, the tenancy terminates on July 15. By accepting a full month’s rent on July 1, however, you accepted rent for the period through July 31, well beyond the termination date of the 15th, and you implicitly revoked the 30-day notice.

In many instances, this defense is identical to the “waiver and cancellation” defense (Item 3d, above), and the tenant can check either or both defenses.

### Item 3i: Other Affirmative Defenses

Although Items 3a through 3h list the most common defenses, an imaginative tenant’s attorney may use Item 3i to describe additional defenses. (This ability of tenants’ attorneys to introduce strange theories into the most mundane case is a large part of the reason we advise you to consider hiring an attorney if one appears for the tenant.) As with the listed defenses, the facts specific to any defense checked here must be listed in Item 3j, below.

### Item 3j: Specific Facts Relating to the Defenses

Under Item 3j on the reverse of the Answer, the tenant is supposed to explain the affirmative defense boxes checked. No special language or format is necessary, and almost any brief, factual statement will do. These statements are supposed to give you an idea of what the defendant is going to try to prove at trial. At trial, the defendant may testify only to subjects he brought up in the Answer.

### Other Things in the Answer

Item 4 on the back of the Answer form has spaces for miscellaneous “other statements.” If the tenant has given up possession of the property before filing

his Answer (Item 4a), for instance, the case will be treated as a regular civil lawsuit. You and the tenant can then ask for things not allowed in an unlawful detainer action, but the case won’t get to trial as fast as an unlawful detainer suit normally would. (Civ. Code § 1952.3.) An unlawful detainer suit is a special “summary” (expedited) procedure with shorter response times, and more restrictions on the issues that may be raised, than regular suits.

In Item 4b, the tenant can state that the prorated daily “fair rental value” you alleged is too high (usually because of a habitability defense).

### Defendant’s Requests

In Item 5, the tenant says what he or she wants. Item 5a allows the tenant to request attorney’s fees. This is proper only if the written rental agreement or lease has an attorney’s fees clause. Because of the restrictions on unlawful detainer suits, there is really nothing else the tenant can properly ask for here.

Finally, Item 5b allows the tenant to ask the court to order the landlord to make repairs and order the rent reduced, if the tenant claims breach of the warranty of habitability as a defense in Item 3a.

## Responding to the Answer

If the tenant has simply denied your allegations, not raised any defenses of his own, and is not represented by an attorney, you are still on pretty firm ground as far as going ahead on your own is concerned. The next step is getting a trial date.

### The Request to Set Case for Trial—Unlawful Detainer

Like almost everything else in the legal system, the trial on your now-contested unlawful detainer Complaint will not happen automatically. You have to ask for it in a form known as a Request to Set Case for Trial.



**If the tenant has moved out.** If the tenant who has filed an Answer moves out before you file your Request to Set Case for Trial, you can still ask the court to set the case for trial. You would normally do this if you want to get a judgment against the tenant for rent and court costs. However, the case becomes a “regular civil action”

without “preference” (Civ. Code § 1952.3), and you should not state your case has preference for trial setting. The court will then set it for trial much more slowly.

To complete this form, type in the information in the boxes at the top of the form, which ask for your name and address, the court and its location, the names of the parties, and the case number, just as you did when preparing the Complaint.

In the large box below the case-identification queries, put an X next to the word “REQUEST,” unless the tenant has already filed a Request to Set Case for Trial. (If the tenant has requested a jury trial, which happens rarely, you’ll need to contact an attorney.) If the tenant has already filed this form, put an X in the box next to the words “COUNTER-REQUEST.”

**Item 1:** Put an X in this box. If there is more than one defendant, and at least one of them has filed an Answer, but at least one other defendant has not, you should obtain a default against all defendants who have not filed an Answer. You’ll be requesting only entry of a default, not a clerk’s judgment for possession. (Later, after winning at trial against the defendants who have filed an Answer, you can ask the judge to order that the judgment also be against those “defaulted” defendants.) See Chapter 7 on filling out the Request for Entry of Default, but don’t check the boxes relevant to obtaining a Clerk’s Judgment for Possession.

**Item 2:** List the rental’s address, including the county. If the tenant is still in possession of the property (that is, the tenant has not turned over the key or otherwise unequivocally demonstrated that he’s turned over possession of the property to you), check box (a). This should result in your having a trial within 20 days of filing your Request to Set Case for Trial. On the other hand, if the tenant has turned over possession of the property to you, and you still seek a money judgment, check box (b). In this situation, as we have noted above, the court will likely set the case for trial much more slowly than if the tenant were still in possession of the property.

**Item 3:** Check the box next to the words “a nonjury trial.” Do not request a jury trial. Jury trials are procedurally much more complex than trials before judges, and it is easy to get in way over your head. Also, the party requesting a jury trial has to deposit jury fees (about \$200/day) with the court in advance. All you want is a

simple trial, lasting no more than a few hours at most, in front of a judge.

**Item 4:** The purpose of this item is to give the court a fair estimate of how long the trial will take. Unless the tenant has demanded a jury trial (in which case you should probably see an attorney), check box (b) and indicate either 1 or 2 hours as an estimate for the trial length. Your estimated time for trial should be anywhere from one hour, for a simple case where the tenant has failed to assert any affirmative defenses, to two hours in cases involving fairly complicated issues like alleged rent control violations, discriminatory or retaliatory evictions, or breach of the warranty to provide habitable premises.

**Item 5:** Indicate any dates that you will not be available for trial. Remember that the court is required by law to set a trial date no later than 20 days from the date you file your Request to Set Case for Trial. If you list dates when you are unavailable (note that you must give a reason), the court may have to schedule trial for more than 20 days from the date you file the Request. If you are content with this latter prospect, add the sentence, “Plaintiff waives the requirement under CCP 1170.5(a) for trial within 20 days of filing of this document.”

**Item 6:** In this item, you simply indicate, as you did in the Complaint and Summons, that an unlawful detainer assistant “did not” assist you. Then, print your name and the date, and sign the document.

On the second page, in the box at the top, list your name after “PLAINTIFF” and the name of the first-named defendant, followed by “ET AL” if there is more than one defendant. Do this just as you did the top of the second and third pages of the Complaint. Also list the case number.

This second page is a Proof of Service by Mail, which shows that a person other than you mailed copies of the form to the tenant who filed the Answer. List the residence or business address of the person who will mail the form for you, in Item 2 of this side of the form. Also, put an X in box 3a. In box 3c (1) and (2), list the date the copy of your Request to Set Case for Trial will be mailed, and the name of the city in which it will be mailed. Just below the words “I declare under penalty of perjury ...,” list the date that person will be signing the proof of service (after he or she mails it). Type that person’s name in the space at the left below the place for that date.



UD-150

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): LENNY D. LANDLORD 12345 Angeleno Street Los Angeles, CA 90010 TELEPHONE NO.: 213-555-6789      FAX No. (Optional): 213-555-6789 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff in Pro Per	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b> STREET ADDRESS: 110 N. Grand Street MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, Ca 90012 BRANCH NAME: CENTRAL DISTRICT/DOWNTOWN BRANCH	
PLAINTIFF: LENNY D. LANDLORD DEFENDANT: TERRENCE D. TENANT, TILLIE D. TENANT	
<input checked="" type="checkbox"/> <b>REQUEST</b> <input type="checkbox"/> <b>COUNTER-REQUEST</b> <b>TO SET CASE FOR TRIAL—UNLAWFUL DETAINER</b> <input type="checkbox"/> <b>Plaintiff</b> <input type="checkbox"/> <b>Defendant</b>	CASE NUMBER: A-12345-B

1. ☒ **Plaintiff's request.** I represent to the court that all parties have been served with process and have appeared or have had a default or dismissal entered against them. I request that this case be set for trial.
2. **Trial preference.** The premises concerning this case are located at (street address, apartment number, city, zip code, and county): 6789 Angeleno Street, Apt. 10, Los Angeles, 90012, Los Angeles County
  - a. ☒ To the best of my knowledge, the right to possession of the premises is still in issue. This case is entitled to legal preference under Code of Civil Procedure section 1179a.
  - b. ☐ To the best of my knowledge, the right to possession of the premises is no longer in issue. No defendant or other person is in possession of the premises.
3. **Jury or nonjury trial.** I request ☐ a jury trial ☒ a nonjury trial.
4. **Estimated length of trial.** I estimate that the trial will take (check one):
  - a. ☐ days (specify number):
  - b. ☒ hours (specify if estimated trial is less than one day): 1
5. **Trial date.** I am not available on the following dates (specify dates and reasons for unavailability):

**UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400–6415)**

6. (Complete in all cases.) An unlawful detainer assistant ☒ did not ☐ did for compensation give advice or assistance with this form. (If declarant has received any help or advice for pay from an unlawful detainer assistant, complete a–f.)
 

a. Assistant's name: b. Street address, city, and zip code:	c. Telephone no.: d. County of registration: e. Registration no.: f. Expires on (date):
--	--

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

Date: September 18, 20xx

Lenny D. Landlord

(TYPE OR PRINT NAME)



*Lenny D. Landlord*

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- An unlawful detainer case must be set for trial on a date not later than **20 days after the first request** to set the case for trial is made (Code Civ. Proc., § 1170.5(a)).
- If a jury is requested, \$150 must be deposited with the court 5 days before trial (Code Civ. Proc., § 631).
- Court reporter and interpreter services vary. Check with the court for availability of services and fees charged.
- If you cannot pay the court fees and costs, you may apply for a fee waiver. Ask the court clerk for a fee waiver form.

PLAINTIFF: LENNY D. LANDLORD	CASE NUMBER:
DEFENDANT: TERRENCE D. TENANT, ET AL	A-12345-B

**PROOF OF SERVICE BY MAIL**

**Instructions:** After having the parties served by mail with the Request/Counter-Request to Set Case for Trial—Unlawful Detainer, (form UD-150), have the person who mailed the form UD-150 complete this Proof of Service by Mail. An **unsigned** copy of the Proof of Service by Mail should be completed and served with form UD-150. Give the Request/Counter-Request to Set Case for Trial—Unlawful Detainer (form UD-150) and the completed Proof of Service by Mail to the clerk for filing. If you are representing yourself, someone else must mail these papers and sign the Proof of Service by Mail.

1. I am over the age of 18 and **not a party to this case**. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is (specify):  
100 A Street, Los Angeles, CA 90010
3. I served the Request/Counter-Request to Set Case for Trial—Unlawful Detainer (form UD-150) by enclosing a copy in an envelope addressed to each person whose name and address are shown below AND
  - a. ☒ **depositing** the sealed envelope in the United States mail on the date and at the place shown in item 3c with the postage fully prepaid.
  - b. ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 3c following ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
  - c. (1) Date mailed: September 18, 20xx  
(2) Place mailed (city and state): Los Angeles, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Date: September 18, 20xx

Sam D. Server

(TYPE OR PRINT NAME)

*Sam D. Server*

(SIGNATURE OF PERSON WHO MAILED FORM UD-150)

**NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED**

	<u>Name</u>	<u>Address (number, street, city, and zip code)</u>
4.	Terrence D. Tenant	6789 Angeleno Street, Apt. 10 Los Angeles, CA 90012
5.	Tillie D. Tenant	6789 Angeleno Street, Apt. 10 Los Angeles, CA 90012
6.		
7.		
8.		
9.		

☐ List of names and addresses continued on a separate attachment or form MC-025, titled Attachment to Proof of Service by Mail.

Finally, under the heading of “NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED,” type the names and addresses of each defendant who has filed an Answer to the Complaint. Use a separate set of boxes for each defendant, even if more than one defendant has filed the same Answer. Also, use the mailing address the tenant (or his attorney) indicated in the upper left box in the Answer. Do this even if the address is different from the tenant’s residence address. (You do not have to list any defendants who have not answered, and against whom you will be taking a default.)

Make two photocopies and have a friend mail one to the tenant (or his attorney) at the mailing addresses in the boxes at the end of the form. Have the friend sign the Proof of Service by Mail, indicating that he mailed the copy, and take the original and one copy to the courthouse. The court clerk will file the original and stamp the copy for your records.

The court will hold on to your Request to Set Case for Trial for up to five days to give the tenant a chance to file a Counter-Request to Set. This gives the tenant the opportunity to also list unavailable dates and dispute any of the information you listed. Then the clerk will set the case for trial on a date no more than 20 days after the date you filed your Memorandum, and will notify you by mail of the date, time, and place of the trial.

## Summary Judgment

As soon as you’ve served and filed the Memorandum to Set Case for Trial, you may want to make a pretrial motion of your own to request a Summary Judgment—a judgment without an actual trial. To be eligible for a Summary Judgment, you must convince a judge that there is no real dispute about the facts in the case—that is, you and the tenant are only really arguing over the legal issues. If the judge agrees, she can issue a judgment on the spot. (C.C.P. § 1170.7.) Not only do you save the effort of preparing for trial, but it also allows you to significantly shorten the time you have to wait to get a judgment and get your tenant out.

This section shows you how to make a Summary Judgment motion in a rent nonpayment case (Chapter 2), using the form provided in the forms section in the back of the book. If your eviction is on any ground

other than for nonpayment of rent, you will need the assistance of an attorney to pursue this remedy. The potential variation in the facts makes it impossible to accurately show you how to draft your papers without producing what would amount to another book.

You must pay a \$100 filing fee to the court clerk when you file this kind of motion. (This is in addition to the \$85 to \$95 fee you paid to file the case.) This may well be worth the price, because if you file this motion quickly after the tenant files her Answer, you could get the tenant evicted one to two weeks sooner than if you waited for the court to set the case for trial. Also, this motion will save you the time and effort involved in a trial. Finally, the \$100 filing fee for this motion will be added to the money judgment you will get against the tenant.

Here is an overview of how a Summary Judgment proceeding works.

The first step is to obtain a motion hearing date at least five days away. Then type the motion papers, which include a Notice of Motion for Summary Judgment, your declaration under penalty of perjury stating the basic facts of the case from your perspective, and a brief legal essay stating why the motion should be granted. Copies of these papers must be served on the tenant at least five days before the hearing, the originals filed with the court, and a motion fee paid to the clerk. At the hearing, you or your lawyer appear. You don’t bring witnesses to testify at this stage because you are only dealing with questions of law, not questions of fact. The important things have already been done, including the written declarations and argument you filed earlier. In most cases, if the tenant doesn’t respond to your motion with his own written declaration contradicting yours, the judge is required to grant the motion, so that you win your case without trial—and sooner. If you lose the motion, you have not really lost anything but some time and \$100. You will still be able to present your full case at the trial.

**EXAMPLE:** Your declaration says that you rented your property to Terrence and Tillie Tenant, that the rent was \$900 per month due on the first, and that they didn’t pay on the first of August. It also states that on August 5, you served them with a three-day notice and they still didn’t pay or leave. Tillie and Terrence can defeat your motion by filing their

own declaration saying that the rent wasn't \$900, that they paid the rent, that they never received the notice, or that you failed to repair serious defects in the property after they notified you of them.

If you decide you want to try to speed up your case by requesting a Summary Judgment, carefully read the following instructions.



If you believe that you and your tenant disagree significantly over the facts, or you are not sure that a Summary Judgment will work and therefore want to wait for the trial rather than engage in yet another procedure, skip to "Other Pretrial Complications," below.



Our instructions assume that the tenant is not represented by an attorney. If she is, you will probably want to consult one and may want to arrange to be represented. Our instructions do not cover how you should proceed if an attorney has appeared for the tenant.

### Step 1: Select a Date for the Hearing on Your Motion

First, find out when the court hears motions. Some of the larger courts hear them on several different days of the week, while smaller courts have their "law and motion" day once a week. Call or visit the court clerk and tell her you're a plaintiff in an unlawful detainer case and wish to have a Summary Judgment motion heard. (You may have to remind the clerk that, unlike motions in regular cases, Summary Judgment motions in unlawful detainer cases are heard on just five days' notice, according to C.C.P. § 1170.7.) Ask what dates and times are available.

In some counties you can choose a date over the phone. In others, the clerk won't schedule your motion hearing on the court calendar until you file your Notice of Motion. (See Step 2, below.)

Pick the earliest date that is at least five days after the day you'll be able to have the motion papers personally served on the tenant. If the court has a policy that only a certain number of cases can be heard at each session, remind the clerk that the case is an unlawful detainer case entitled to priority.

### Step 2: Prepare the Papers

If you think you've already been run through the mill on the paperwork required to do a "simple" eviction,

it's time to grit your teeth and prepare for some more. Even the most simple request to a court, including your Summary Judgment motion papers, must be submitted on typed, double-spaced, 8½" x 11" legal pleading paper with the numbers down the left-hand side. You can copy the blank sheet of pleading paper in Appendix 3. The papers consist of three parts, which can be combined into one document. These are:

1. Notice of Motion, which tells the tenant where, when, and on what legal grounds you're making the motion
2. Declaration, in which you and/or someone else states the pertinent facts under penalty of perjury, and
3. Memorandum of Points and Authorities (usually referred to simply as "points and authorities"), a short legalistic statement that explains why the facts stated in the declaration legally entitle you to judgment.

Below are provided instructions and sample completed forms demonstrating how to draft each of these documents.



A blank, tear-out version of a Notice of Motion for Summary Judgment; Plaintiff's Declaration; and Points and Authorities are in Appendix 3. The CD-ROM also includes these items. Instructions for using the CD are in Appendix 2.

### Step 3: Photocopy the Papers

Once you've prepared and signed your Summary Judgment motion papers, make a set of photocopies for each tenant who has answered the Complaint, plus one for your files. For instance, if three tenants have answered the Complaint, you will need at least four photocopies.

### Step 4: Have the Papers Served

Because of the short (five-day) notice given the tenant, you must have the papers personally served on each tenant or on another person over 18 at the tenant's home. Unlike service of the Summons, service on an adult at the tenant's residence—or on an employee in the office of the tenant's attorney, if the tenant is represented—is sufficient, and the time for the tenant to respond is not extended by the fact that he did not receive them personally. (C.C.P. § 1011.)

Name: **list your mailing address and phone number**

Address:

Phone:

Plaintiff in Pro Per

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **list county**  
**list division here** DIVISION

**your name** ) Case No. **case number**  
 Plaintiff, )  
 ) NOTICE OF MOTION FOR SUMMARY JUDGMENT;  
 v. ) PLAINTIFF'S DECLARATION; POINTS AND AUTHORITIES  
**defendants' names** ) (C.C.P. 437C, 1170.7)  
 Defendant(s). )  
 ) Hearing Date: ● **list hearing date, time,**  
 ) Time: ● **and courtroom number**  
 ) Courtroom: ●

TO DEFENDANTS **defendants' names**  
 AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ M in the above-  
 entitled Court, at **list court address and city**,

City of \_\_\_\_\_, California, the above-named plaintiff  
 will move the Court for an Order granting summary judgment for possession of the subject premises herein, rent,  
 damages, and costs in the above-entitled action.

This motion is made on the ground that defendants' defense has no merit and there exists no triable issue of  
 fact as to plaintiff's cause of action, plaintiff having established that defendants are guilty of unlawfully detaining  
 the subject premises following nonpayment of the rent due, service of a three-day notice to pay rent or quit, and  
 failure to pay the rent or vacate the premises within the time given in the said notice.

This motion is based on this notice, the declaration of plaintiff attached hereto, the points and authorities

DATED: \_\_\_\_\_, \_\_\_\_\_

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8. I have incurred service and filing fees in the total amount of \$ **list court costs amount** in the within action.

9. If sworn as a witness, I could testify competently to the facts stated herein.

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

DATED: \_\_\_\_\_, \_\_\_\_\_

**date and sign**

\_\_\_\_\_  
Plaintiff in Pro Per

## POINTS AND AUTHORITIES

**you don't have to fill in  
anything on this page**

I. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS PROPERLY BEFORE THE COURT.

In an unlawful detainer action a motion for summary judgment may be made on five days' notice. C.C.P. Sec. 1170.7. The time limits imposed by subdivision (a) of section 437c, as well as the requirement in subdivision (b) of a separate statement of material facts not in dispute, are not applicable to summary judgment motions in unlawful detainer actions. C.C.P. Sec. 437c(r).

The "separate statement" requirement for summary judgment motions does not apply to unlawful detainer actions. C.C.P. Section 437c, subdivision (q), states: "Subdivisions (a) and (b) shall not apply to actions brought pursuant to Chapter 4 (commencing with section 1159) of Title 3 of Part 3." The latter refers to the unlawful detainer statutes, and the requirement for a separate statement of facts is in section 437c(b). Thus, C.C.P. Section 437c(q) expressly states, though by an obscure reference to its own subdivision (b) and to C.C.P. Sections 1159 et seq., that unlawful detainer summary judgment motions do not require a separate statement of facts contended to be undisputed. While Rule 342, California Rules of Court, is silent on this issue, to construe such silence as requiring a separate statement of undisputed facts in unlawful detainer summary judgment motions, notwithstanding C.C.P. Section 437c(q), would allow a rule of court to supersede a statute, which is not permitted.

In all other respects, the motion is required to be granted on the same terms and conditions as a summary judgment motion under C.C.P. Sec. 437c, and such a motion must be decided solely on the affidavits or declarations filed. Ibid, subd. (c).

II. PLAINTIFF HAS ESTABLISHED THE PRIMA FACIE ELEMENTS OF AN UNLAWFUL  
DETAINER ACTION FOR NONPAYMENT OF RENT.

Under section 1162(2) of the Code of Civil Procedure, a tenant or subtenant is guilty of unlawful detainer

When he continues in possession ... after default in the payment of rent ... and three days' notice, in writing requiring its payment, stating the amount which is due, or possession of the property, shall have been served on him ....

Elements other than default in rent, service of the notice, the expiration of three days without payment, and the continuance in possession include the existence of a landlord-tenant relationship (Fredricksen v. McCosker (1956) 143 Cal. App. 2d 114) and proper contents of the notice (Wilson v. Sadleir (1915) 26 Cal. App. 357, 359).



1 Plaintiff's declaration establishes all these elements, so that plaintiff is entitled to summary judgment.

2 III. DEFENDANT(S) CANNOT PREVAIL UNDER A DEFENSE OF BREACH OF  
3 THE IMPLIED WARRANTY OF HABITABILITY.

4 Under the rule of Green v. Superior Court (1974) 10 Cal. 3d 616, the California Supreme Court held that in  
5 an unlawful detainer action founded on nonpayment of rent, the tenant could assert as a defense that the  
6 landlord breached an implied warranty to keep the premises habitable. The Court cited with approval the case of  
7 Hinson v. Delis (1972) 26 Cal. App. 3d 62 in this regard. In Hinson, the tenant sued the landlord in a regular  
8 civil action for breach of this implied warranty. After the trial court ruled in favor of the landlord, the Court of  
9 Appeal reversed, holding that there existed such a warranty in the law, as to which, "The tenant must also give  
10 notice of alleged defects to the landlord and allow a reasonable time for repairs to be made." Hinson at p. 70.  
11 When the Green court held that the warranty of habitability established by the Hinson court could be asserted  
12 by the tenant as a defense to an unlawful detainer action, as well as a basis for suit by the tenant, it did not  
13 modify or remove this requirement of notice by the tenant to the landlord of the alleged defects by which the  
14 tenant seeks to withhold rent. Therefore, the notice requirement also applies where the defense is asserted by the  
15 tenant in an unlawful detainer action.

16 Plaintiff's declaration establishes that defendant(s) failed to give plaintiff notice of the alleged defects in the  
17 premises. Unless a triable issue of fact exists in this regard, defendant(s) cannot assert this defense, as a matter of  
18 law.

19 DATED: \_\_\_\_\_ **date and sign**

20 \_\_\_\_\_  
21 Plaintiff in Pro Per  
22  
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PROOF OF PERSONAL SERVICE  
(C.C.P. § 1011 (b))

I the undersigned, declare:

I am over the age of 18 years and not a party to the within action.

On September 5, 20xx, I served the within Notice of Motion for Summary Judgment, Declaration of Plaintiff, and Points and Authorities on defendant(s) by delivering true copies thereof to each such defendant, or other person not less than 18 years of age, at defendants' residence address of 6789 Angel Street, Apt. 10, City of Los Angeles, California, between 8:00 A.M. and 6:00 P.M.

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

DATED: September 5, 20xx Fred Friend  
Signature

As with a Summons, you can't serve the papers yourself, but must have a friend or other disinterested person over 18 do it for you. Since service can be made on any adult who answers the door at the tenant's residence, all the tenants named as defendants can be served at the same time this way, provided one copy for each defendant is given to the person answering. The person serving the papers then fills out the Proof of Service on the originals, before they are filed with the court.



The C.C.P. § 1011 Proof of Service deliberately does not include a place for you to insert the time of service, because noting time of service when serving a Motion for Summary Judgment is not necessary. Many people, however, inappropriately use the Service of Summons Proof of Service form when serving this motion—and the Service of Summons form *does* require you to note the time of service. Perhaps this explains why some clerks have come to believe that a Proof of Service must always include the time of service. If you want to be extra careful, add the time of service (such as “at 4:56 PM”) right after the date on our form.

### Step 5: File the Papers

Finally, you must file the original motion papers, including Proof of Service, with the court clerk as soon as possible after the copies are served on the tenant. The clerk should file the originals and file-stamp and return any copies to you. She will also place the motion hearing “on calendar” (if that wasn't done when you called earlier), and ask you to pay a motion fee of \$200.

### Step 6: Prepare the Proposed Order and Judgment

While you're waiting the five or more days until the hearing, you should prepare a proposed order granting your motion and a proposed judgment for the judge to sign. This allows you to hand the judge the necessary papers to sign right at the hearing if he grants your motion. If you don't have the judgment ready for the judge to sign, a delay of several days might result from your having to run home, type the papers, bring them back to court, and get them to the judge for signature. Once signed, you can take them to the clerk and get the actual eviction rolling, using the procedures in “The Writ of Execution and Having the Sheriff or Marshall Evict,” below.

Instructions and samples for your proposed order granting the motion and the resulting judgment are shown below. We show you instructions for both a typewritten judgment, and a judgment on the optional statewide Judgment—Unlawful Detainer form. (We suggest using the typewritten form because the statewide form doesn't seem to be intended for use where the landlord prevails by Summary Judgment motion.)

### Step 7: Prepare the Writ of Execution

Chapter 7 shows how to prepare a Writ of Execution for possession of the property after getting a default Judgment for Possession. Chapter 9 shows how to fill out another Writ of Execution for the money part of the judgment after the tenant leaves. If you win a Summary Judgment motion, however, you get both parts of the judgment—money and possession of property—at the same time. You need only one Writ of Execution. Refer to both sets of instructions in Chapters 7 and 9 to fill in the appropriate information on the Writ of Execution. A sample is shown below.

### Step 8: Argue Your Motion in Court

The evening before the hearing, you should sit down, try to relax, and review the points stated in your motion papers. On the day of the hearing, try to get to the courtroom a little early. At the entrance, there may be a bulletin board with a list of the cases to be heard that morning. If your case isn't listed, check with the clerk.

Try to find out whether or not the tenant has filed a written response to your motion. The fact that you didn't receive a copy of any response in the mail doesn't prove anything, because the law seems to allow the tenant to file a response at any time before the hearing. If the tenant appears at the hearing, it won't hurt to walk up and ask if he filed a response to your papers. If the answer is “Yes,” ask for a copy. Also, if you can fight your way through all the attorneys clustered around the courtroom clerk, ask her to check the file to see if there's a response. If there is, ask to see it. Assuming the judge doesn't have the file in her chambers, the clerk will hand it to you. If the tenant has filed a response to your motion, the papers should be at the top of the papers in the file, just above your motion papers. Look for any declaration or affidavit that contradicts your declaration. If there isn't one, you will

Name: **list your mailing address and phone number**

Address:

Phone:

Plaintiff in Pro Per

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **list county**  
**list division here** DIVISION

**your name**

**case number**

\_\_\_\_\_) Case No. \_\_\_\_\_  
 Plaintiff, \_\_\_\_\_)

v. \_\_\_\_\_) ORDER GRANTING MOTION  
 \_\_\_\_\_) FOR SUMMARY JUDGMENT

**defendants' names**

\_\_\_\_\_)  
 Defendant(s). \_\_\_\_\_)

**list date and courtroom in which  
your hearing will be held**

Plaintiff's motion for summary judgment came on for hearing in Department \_\_\_\_\_ of  
 the above-entitled Court on \_\_\_\_\_, \_\_\_\_\_, said plaintiff appearing in pro per

**if defendants didn't appear, insert "not"**

and defendant(s) \_\_\_\_\_ appearing by \_\_\_\_\_ **insert defendants' attorney's name; if no attorney, type "in pro per" and cross out "by"**

The matter having been argued and submitted,

IT IS HEREBY ORDERED that plaintiff's motion for summary judgment for restitution of the premises the  
 subject of this action, rent and damages in the sum of \$ **fill in amount**, and costs of suit be, and the  
 same is, granted.

**leave date and signature lines blank for judge to fill in**

DATED: \_\_\_\_\_

\_\_\_\_\_  
 Judge of the Superior Court

Name: LENNY D. LANDLORD  
 Address: 12345 Angeleno Street  
 Los Angeles, CA 90010  
 Phone: 213-555-6789

Plaintiff in Pro Per

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

LOS ANGELES DIVISION

LENNY D. LANDLORD

Plaintiff,

v.

TERRENCE D. TENANT, TILLIE D. TENANT

Defendant(s).

) Case No. A-12345-B

) ORDER GRANTING MOTION

) FOR SUMMARY JUDGMENT

Plaintiff's motion for summary judgment came on for hearing in Department 12 of  
 the above-entitled Court on September 9, 20xx, said plaintiff appearing in pro per  
 and defendant(s) not appearing ~~by~~ in pro per.

The matter having been argued and submitted,

IT IS HEREBY ORDERED that plaintiff's motion for summary judgment for restitution of the premises the  
 subject of this action, rent and damages in the sum of \$ 1,120.00, and costs of suit be, and the  
 same is, granted.

DATED: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
 Judge of the Superior Court

Name: **list your mailing address and phone number**

Address:

Phone:

Plaintiff in Pro Per

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

**list county**

**list division here**

DIVISION

**your name**

) Case No.

**case number**

Plaintiff,

)

) JUDGMENT FOLLOWING GRANTING

v.

)

) OF MOTION FOR SUMMARY JUDGMENT

**defendants' names**

)

Defendant(s).

)

The motion of plaintiff for summary judgment having been granted,

IT IS HEREBY ORDERED AND ADJUDGED that plaintiff have and recover from defendant(s)

**list names of defendants**

possession and restitution of the real property located at **list address, city, and county of property**

, City of

County of , California, rent and damages in the sum of

\$ , plus costs of suit in the sum of \$ , for the total sum of \$

**fill in rent/damages  
amount and total  
amount after adding  
costs**

DATED: ,

Judge of the Superior Court

Name: LENNY D. LANDLORD  
 Address: 12345 Angeleno Street  
 Los Angeles, CA 90010  
 Phone: 213-555-6789

Plaintiff in Pro Per

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

LOS ANGELES DIVISION

LENNY D. LANDLORD

Plaintiff,

v.

TERRENCE D. TENANT, TILLIE D. TENANT

Defendant(s).

) Case No. A-12345-B

)

) JUDGMENT FOLLOWING GRANTING

) OF MOTION FOR SUMMARY JUDGMENT

)

)

)

The motion of plaintiff for summary judgment having been granted,

IT IS HEREBY ORDERED AND ADJUDGED that plaintiff have and recover from defendant(s) \_\_\_\_\_

Terrence D. Tenant and Tillie D. Tenant

possession and restitution of the real property located at 6789 Angeleno Street, Apt. 10

\_\_\_\_\_, City of Los Angeles,

County of Los Angeles, California, rent and damages in the sum of

\$ 1,120.00, plus costs of suit in the sum of \$ 110.00, for the total sum of \$ 1,230.00.

DATED: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
 Judge of the Superior Court

UD-110

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address)</p> <div style="border: 1px solid black; padding: 5px; text-align: center; margin: 10px 0;">list your name, address, and phone number</div> <p>TELEPHONE NO.: _____ FAX NO. (Optional): _____</p> <p>E-MAIL ADDRESS (Optional): _____</p> <p>ATTORNEY FOR (Name): Plaintiff in Pro Per</p> <hr/> <p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b></p> <p>STREET ADDRESS: _____</p> <p>MAILING ADDRESS: <div style="border: 1px solid black; padding: 2px; display: inline-block;">court, county, address, and branch</div></p> <p>CITY AND ZIP CODE: _____</p> <p>BRANCH NAME: _____</p> <hr/> <p>PLAINTIFF: _____</p> <p>DEFENDANT: <div style="border: 1px solid black; padding: 2px; display: inline-block;">plaintiff's and defendants' names</div></p> <hr/> <p style="text-align: center;"><b>JUDGMENT—UNLAWFUL DETAINER</b></p> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input type="checkbox"/> By Clerk  <input checked="" type="checkbox"/> By Court         </div> <div style="width: 30%;"> <input type="checkbox"/> By Default  <input type="checkbox"/> Possession Only         </div> <div style="width: 30%;"> <input type="checkbox"/> After Court Trial  <input type="checkbox"/> Defendant Did Not Appear at Trial         </div> </div>	<p><i>FOR COURT USE ONLY</i></p>          <p>CASE NUMBER: <div style="border: 1px solid black; padding: 2px; display: inline-block;">case number</div></p>
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**JUDGMENT**

1. ☐ **BY DEFAULT**
  - a. Defendant was properly served with a copy of the summons and complaint.
  - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
  - c. Defendant's default was entered by the clerk upon plaintiff's application.
  - d. ☐ **Clerk's Judgment** (Code Civ. Proc., § 1169). For possession only of the premises described on page 2 (item 4).
  - e. ☐ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
    - (1) ☐ plaintiff's testimony and other evidence.
    - (2) ☐ plaintiff's or others' written declaration and evidence (Code Civ. Proc., § 585(d)).
  
2. ☐ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
  - a. The case was tried on (date and time): \_\_\_\_\_  
 before (name of judicial officer): \_\_\_\_\_

leave Items 1 and 2 blank everywhere

  - b. Appearances by:
 

☐ Plaintiff (name each): \_\_\_\_\_

☐ Plaintiff's attorney (name each): \_\_\_\_\_  
 (1) \_\_\_\_\_  
 (2) \_\_\_\_\_

☐ Continued on Attachment 2b (form MC-025).

☐ Defendant (name each): \_\_\_\_\_

☐ Defendant's attorney (name each): \_\_\_\_\_  
 (1) \_\_\_\_\_  
 (2) \_\_\_\_\_

☐ Continued on Attachment 2b (form MC-025).
  - c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
  - d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.



PLAINTIFF: <span style="border: 1px solid black; padding: 2px 10px;">plaintiff's and defendants' name(s)</span>	CASE NUMBER: <span style="border: 1px solid black; padding: 2px 10px;">case number</span>
DEFENDANT:	

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK

3. **Parties.** Judgment is

a. ☒ for plaintiff (name each): plaintiff's name

and against defendant (name each): defendants' name(s)

☐ Continued on Attachment 3a (form MC-025).

b. ☐ for defendant (name each):

4. ☒ Plaintiff ☐ Defendant is entitled to possession of the premises located at (street address, apartment, city, and county):

list complete address of property

5. ☐ Judgment applies to all occupants of the premises including tenants, subtenants if any, and named claimants if any (Code Civ. Proc., §§ 715.010, 1169, and 1174.3).

check only if you used Prejudgment Claim of Right to Possession procedure. Ch. 6, Sec. 12

6. **Amount and terms of judgment**

a. ☒ Defendant named in item 3a above must pay plaintiff on the complaint:

b. ☐ Plaintiff is to receive nothing from defendant named in item 3b.

(1) <input type="checkbox"/> Past-due rent	\$	list amounts of past-due rent demanded in 3-day notice and/or holdover (daily pro-rated) damages, and total court costs, and total them
(2) <input type="checkbox"/> Holdover damages	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (specify):	\$	
(6) <b>TOTAL JUDGMENT</b>	\$	

☐ Defendant named in item 3b is to recover costs: \$  
☐ and attorney fees: \$

c. ☐ The rental agreement is canceled. ☐ The lease is forfeited.

check as appropriate

7. ☐ **Conditional judgment.** Plaintiff has breached the agreement to provide habitable premises to defendant as stated in Judgment—Unlawful Detainer Attachment (form UD-110S), which is attached.

8. ☒ **Other (specify):** Judgment granted pursuant to separate Order Granting Motion for Summary Judgment

☐ Continued on Attachment 8 (form MC-025).

Date:  \_\_\_\_\_  
JUDICIAL OFFICER

Date:  Clerk, by \_\_\_\_\_, Deputy

(SEAL)

**CLERK'S CERTIFICATE (Optional)**

I certify that this is a true copy of the original judgment on file in the court.

Date: \_\_\_\_\_

Clerk, by \_\_\_\_\_, Deputy

UD-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) LENNY D. LANDLORD 1234 ANGELENO STREET LOS ANGELES, CA 90010 TELEPHONE NO.: 213-555-6789 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff in Pro Per		FOR COURT USE ONLY           CASE NUMBER: A-12345-B
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 110 N. Grand Avenue MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: CENTRAL DISTRICT/DOWNTOWN BRANCH		
PLAINTIFF: LENNY D. LANDLORD DEFENDANT: TERRENCE D. TENANT, TILLIE D. TENANT		
<b>JUDGMENT—UNLAWFUL DETAINER</b> <input type="checkbox"/> By Clerk <input type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> Possession Only <input type="checkbox"/> Defendant Did Not Appear at Trial		

## JUDGMENT

1. ☐ **BY DEFAULT**
- a. Defendant was properly served with a copy of the summons and complaint.
  - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
  - c. Defendant's default was entered by the clerk upon plaintiff's application.
  - d. ☐ **Clerk's Judgment** (Code Civ. Proc., § 1169). For possession only of the premises described on page 2 (item 4).
  - e. ☐ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
    - (1) ☐ plaintiff's testimony and other evidence.
    - (2) ☐ plaintiff's or others' written declaration and evidence (Code Civ. Proc., § 585(d)).
2. ☐ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
- a. The case was tried on (date and time):  
before (name of judicial officer):
  - b. Appearances by:
 

<input type="checkbox"/> Plaintiff (name each):   <input type="checkbox"/> Continued on Attachment 2b (form MC-025). <input type="checkbox"/> Defendant (name each):   <input type="checkbox"/> Continued on Attachment 2b (form MC-025).	<input type="checkbox"/> Plaintiff's attorney (name each): (1) (2)  <input type="checkbox"/> Defendant's attorney (name each): (1) (2)
--	--
  - c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
  - d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

Page 1 of 2

PLAINTIFF: LENNY D., LANDLORD  
 DEFENDANT: TERRENCE D. TENANT, ET AL

CASE NUMBER:  
 A-12345-B

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK

3. **Parties.** Judgment is

a. ☒ for plaintiff (*name each*): Lenny D. Landlord

and against defendant (*name each*): Terrence D. Tenant, Tillie D. Tenant

☐ Continued on *Attachment 3a* (form MC-025).

b. ☐ for defendant (*name each*):

4. ☒ Plaintiff ☐ Defendant is entitled to possession of the premises located at (*street address, apartment, city, and county*):  
 6789 Angel Street, Apt. 10, Los Angeles, Los Angeles County

5. ☐ Judgment applies to all occupants of the premises including tenants, subtenants if any, and named claimants if any (Code Civ. Proc., §§ 715.010, 1169, and 1174.3).

6. **Amount and terms of judgment**

a. ☒ Defendant named in item 3a above must pay plaintiff on the complaint:

(1) <input checked="" type="checkbox"/> Past-due rent	\$ 900.00
(2) <input checked="" type="checkbox"/> Holdover damages	\$ 220.00
(3) <input type="checkbox"/> Attorney fees	\$
(4) <input checked="" type="checkbox"/> Costs	\$ 243.00
(5) <input type="checkbox"/> Other ( <i>specify</i> ):	\$
(6) <b>TOTAL JUDGMENT</b>	\$ 1,363.00

b. ☐ Plaintiff is to receive nothing from defendant named in item 3b.

☐ Defendant named in item 3b is to recover costs: \$  
☐ and attorney fees: \$

c. ☐ The rental agreement is canceled. ☐ The lease is forfeited.

7. ☐ **Conditional judgment.** Plaintiff has breached the agreement to provide habitable premises to defendant as stated in *Judgment—Unlawful Detainer Attachment* (form UD-110S), which is attached.

8. ☐ **Other** (*specify*):

☒ Continued on *Attachment 8* (form MC-025). Judgment granted pursuant to separate Order Granting Motion for Summary Judgment.

Date: ☐ \_\_\_\_\_  
 JUDICIAL OFFICER

Date: ☐ Clerk, by \_\_\_\_\_, Deputy

(SEAL)

**CLERK'S CERTIFICATE** (*Optional*)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by \_\_\_\_\_, Deputy



SHORT TITLE:

LANDLORD V. TENANT

CASE NUMBER:

A-12345-B

— Items continued from the first page —

- 4.
- ☐
- Additional judgment debtor (name and last known address):

- 7.
- ☐
- Notice of sale has been requested by (name and address):

- 8.
- ☐
- Joint debtor was declared bound by the judgment (CCP 989-994)

a. on (date):

a. on (date):

b. name and address of joint debtor:

b. name and address of joint debtor:

c. ☐ additional costs against certain joint debtors (itemize):

- 9.
- ☒
- (Writ of Possession or Writ of Sale) Judgment was entered for the following: August 10, 20xx

a. ☒ Possession of real property: The complaint was filed on (date):

(Check (1) or (2)):

(1) ☒ The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46.

The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.

(2) ☐ The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.

(a) \$ \_\_\_\_\_ was the daily rental value on the date the complaint was filed.

(b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify):

b. ☐ Possession of personal property☐ If delivery cannot be had, then for the value (itemize in 9e) specified in the judgment or supplemental order.c. ☐ Sale of personal propertyd. ☐ Sale of real property

e. Description of property:

6789 Angel Street, Apt. 10

Los Angeles, CA 90012

## — NOTICE TO PERSON SERVED —

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying Notice of Levy.

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

► A Claim of Right to Possession form accompanies this writ (unless the Summons was served in compliance with CCP 415.46).

probably win the motion by default. On the other hand, if the tenant has submitted a declaration, the judge will most likely have to rule that there is a “triable issue of fact” presented by the tenant’s papers and that Summary Judgment is therefore improper. The judge will not attempt to decide at this time which side’s statements are true—that’s the trial’s function. The fact that there is a contradiction is enough to defeat your motion and necessitate a trial.

When your case is called, step forward. Some judges prefer to ask questions, but others prefer that the person bringing the motion (you) start talking first. If the tenant has not filed a declaration, you should politely point out to the judge all of the following:

- C.C.P. § 1170.7 requires the judge to grant a Summary Judgment motion in an unlawful detainer case on the same basis as in regular civil cases under § 437c.
- There is no requirement for a “separate statement” of disputed or undisputed facts, as required in Summary Judgment motions in regular civil cases. Subdivision “(r)” of C.C.P. § 437c says this.
- C.C.P. § 437c requires the judge to rule based only on what the declarations or affidavits of the parties say, not what the tenant says at the hearing.
- Therefore, if the tenant hasn’t filed a declaration, your motion should be granted, regardless of what arguments the tenant advances. The tenant cannot rely on the statements in his or her Answer, even if signed under penalty of perjury. (C.C.P. § 437c(o)(1).)

Say this in your own words, and don’t be nervous. If the tenant has filed papers in response to your motion, be prepared to point out that the tenant’s declaration doesn’t contradict yours (if this is so), or perhaps even that the tenant’s papers aren’t in the proper legal form of a declaration under penalty of perjury (if that’s correct). If the tenant tries to file the papers right there at the hearing, and you haven’t received copies, you should let the judge know and ask to see what the tenant is filing. You may want to ask the judge to pass your case for a few minutes while you review the response.

After the tenant or his lawyer has had a chance to argue his side, the judge will either rule on the motion or take the matter “under submission.” (In some cases, the judge will grant a one-week continuance or postponement to a tenant who states a credible defense but

hasn’t come up with a written declaration.) If the judge denies the motion, you will have to wait until trial to get a judgment. If the judge grants the motion, present your proposed order and judgment for him to sign. Once that’s done, you can have the clerk issue a Writ of Execution, which is then forwarded to the sheriff to begin the eviction. (See Chapter 7.)

## Other Pretrial Complications

Between the time you file a Memorandum to Set Case for Trial and the date set for trial, the tenant may file legal documents requiring action on your part. They can include the following.

### Countermemo to Set/Jury Demand

Many tenants think it is in their interest to demand a jury trial. They are often right. Not only does this delay scheduling of the case, but (in certain areas) it sometimes guarantees an audience more receptive to the tenant’s arguments and less skeptical than a case-worn judge.

The tenant can ask for a jury trial with a document called a “jury demand” or in a “counter-memorandum,” a response to your Memorandum to Set. There is normally nothing you can do to avoid a jury trial if the tenant demands it and pays the jury fees in advance.



If a jury trial is demanded, it is wise for you to seek legal representation. In a jury trial, a complex set of rules governs what evidence the jury may hear. It’s very difficult for a nonlawyer to competently deal with these rules. In a trial before a judge without a jury, things are much simpler because judges, who know the rules themselves, just disregard evidence that it is improper for them to consider.

### Discovery Requests

One of the biggest surprises to many nonlawyers about the legal system is that in all civil cases, including eviction lawsuits, each side has the right to force the other side to disclose, before trial, any relevant information it has about the case. Discovery is most often initiated by lawyers, not by tenants representing themselves, and if your tenant is represented by a lawyer, you may want to be, too. This following brief discussion of discovery techniques is just to give you an overview.

## Depositions

In very rare instances, a tenant's lawyer may mail you a document that instructs you to show up at the lawyer's office and answer questions under oath about the case at a "deposition." The tenant's lawyer's questions and your responses to them are taken down by a court reporter. Any of your answers can be used against you later at trial. You must pay the court reporter a fairly hefty fee for a copy of the transcript, typically about a dollar for each double-spaced page; if you win the lawsuit, this sum is recoverable in the judgment as a court cost.

The rules on the types of questions the lawyer is allowed to ask are fairly complicated. The basic rule is that you must answer any question that might lead the tenant's lawyer to the discovery of relevant evidence. Your refusal to answer a proper question or to attend a deposition after proper notification can be punished by a court-ordered fine, if the other side requests it, or, in extreme cases, by dismissal of your case.

## Interrogatories and Requests for Admissions

Another far more common way the tenant may obtain relevant information is to mail you questions called "interrogatories." They may be typed or may be entered on a standard form provided by the court clerk. You are required to answer all interrogatories within ten days if they're mailed to you (five days if they are personally served). As with depositions, the rules about the type of questions you have to answer are fairly technical, but basically you have to respond to all questions that might lead the other side to relevant information.

Requests for Admissions are something like interrogatories, but instead of having to make a possibly detailed response to a particular question, you have only to admit or deny statements put to you by the other side.

Because admission or denial of a key statement can be used against your position in court, you must be very careful in answering each request. Your failure to answer (or to answer on time) is equivalent to admitting that all the statements are true. This can be extremely damaging, if not fatal, to your case.

## Requests to Produce and/or Inspect

A third discovery device is the Request to Produce and/or Inspect. This is a written request that you produce specified documents, books, or other records for inspection and copying by the other party, on a certain

date and time. The party receiving the notice usually makes photocopies and mails them, rather than waiting for the other party or attorney to show up to inspect the records.

You must respond within five days, and produce the documents for actual inspection within ten days. Again, the rules on the type of material that can be requested this way are technical, but generally any records that can lead to relevant information can be sought.



If the tenant seeks to have you produce sensitive or confidential business records that you do not believe are directly relevant to the proceeding, see a lawyer.

So far we have assumed that the discovery was initiated by the tenant. However, you can also use discovery to obtain information relating to the tenant's defense of the case. While this is not normally necessary, there are always exceptional cases. For example, you might want the tenant claiming a bogus habitability defense to admit she didn't complain to you or anyone else about the condition of the property until after you insisted on receiving the rent. Unfortunately, the special skills involved in properly drafting interrogatories and requests for admissions and in conducting depositions are beyond the scope of this book.



If you think you need to utilize discovery to find out more about the tenant's defense, consult an attorney.

## Preparing for Trial

Preparing a case for trial and handling the trial itself are both very difficult subjects to handle in a self-help law book. Few eviction cases go to trial, but each case has its own unpredictable twists and turns that can greatly affect trial preparation and tactics. Simply put, there is no way for us to guide you step by step through this process. For this reason, we believe you will probably elect to bring a lawyer into the case, assuming you are still doing it yourself, to assist with the preparation for and conduct of the trial.

Here we provide you with a basic overview of what needs to be done for and at the trial so that you will know what to expect and better be able to assist your lawyer.

If the tenant filed an Answer to your Complaint, and the court has set the case for trial but you think the tenant has moved out and might not show up for trial, prepare for trial anyway. First, the tenant might not have actually moved out, and you're safer waiting to get a judgment before retaking possession (unless, of course, you've settled the case and the tenant has returned the keys). Second, unless you and the tenant have settled the case, you'll still want to get the money part of the judgment. Third, if you don't show up for trial—and the tenant does—the tenant will win and be entitled to move back in and to collect costs from you.

## What You Have to Prove at Trial

What you must prove at trial obviously depends on the issues raised in your Complaint and the tenant's Answer. For example, the testimony in a case based on nonpayment of rent where the tenant's defense is that you failed to keep the premises habitable will be very different from that in a case based on termination of a month-to-month tenancy by 30-day notice where the tenant denies receiving the notice.

All contested evictions are similar, however, in that you, the plaintiff, have to do two things in order to win: First, you have to establish the basic elements of your case; this means you have to present hard evidence (usually through documents or live testimony) of the basic facts that would cause the judge to rule in your favor if the tenant didn't present a defense. If you don't produce evidence on every essential factual issue contested by the tenant in his Answer, the tenant can win the case by pointing this out to the judge right after you "rest" your case. This is done by the tenant making a "motion for judgment" after you have presented your evidence and closed your case.

The second thing you have to do is provide an adequate response to any rebuttal or defense the tenant presents. For example, the tenant may say he didn't have to pay the rent because you didn't fix the leaky roof, overflowing toilet, or defective water heater. You should counter with whatever facts relieve you of this responsibility. This might be that you kept the premises habitable or that the tenant didn't tell you about the defects until well after you began to ask about the late rent. (See *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 11, on the landlord's duty to keep the property habitable.)

## Elements of Your Case

If the tenant has denied everything in your Complaint, you will have to prove your case. To give you some idea of what is required, we set out the legal elements that must be proved for various types of eviction below. Also remember that if the tenant has admitted an element, you don't have to prove it. For example, if the tenant's Answer admits that your allegations in paragraph 9 of the Complaint are true, and you alleged in that paragraph that the tenant was served with a three-day notice on a certain date, you don't have to present testimony to prove it.

Okay, now find the symbol representing your type of eviction and review the elements that you will have to prove.



### Eviction for Nonpayment of Rent.

- You, your agent, or the person from whom you purchased the property (or her agent) rented the property to the tenant pursuant to an oral or written agreement.
- The monthly rent was a certain amount.
- The tenant got behind in the rent, so that she owed a certain amount.
- The tenant was properly served with a Three-Day Notice to Pay Rent or Quit.
- The notice demanded that the tenant pay the exact amount of rent due or leave within three days.
- The tenant neither paid the amount demanded in the notice nor left within three days (plus any extensions allowed if the third day fell on a weekend or holiday).
- The tenant is still in possession of the property.
- You have complied with any applicable rent control or just cause eviction ordinances and regulations.



### Eviction for Termination of Month-to-Month Tenancy.

- You, your agent, and so on, rented the property to the tenant.
- The tenancy is month to month, having either started out that way or having become month to month after a fixed-term lease expired.
- If a local rent control or eviction ordinance requires "just cause" for terminating a month-to-month tenancy, the reason you give for termination is



true and you've complied with all aspects of the ordinance and any applicable regulations.

- The tenant was served with a written notice requiring that he leave and giving him at least 30 days to do so if his tenancy lasted less than a year, and at least 60 days if a year or more.
- The 30-day (or longer) period has expired and the tenant is still in possession of the property.



#### **Eviction for Violation of Lease/Nuisance/Waste.**

- You, your agent, and so on, rented the property to the tenant.
- The lease or rental agreement contains a valid clause requiring the tenant to do something (for example, pay a security deposit installment by a certain date) or to refrain from doing something (like having pets or subletting the property), and the tenant has violated the clause, or the tenant seriously damaged the property, used it unlawfully, or created a legal nuisance.
- The tenant was served with a three-day notice demanding that she vacate the property within that time, or, if the violation was correctable, that the tenant correct it within that time.
- The tenant neither vacated the property nor corrected the problem (if correctable) after the three days, plus any extensions.
- The tenant is still in possession of the property.
- You have complied with applicable rent control or just cause eviction ordinances or regulations.

## **Assessing and Countering the Tenant's Defenses**

If the tenant raised any affirmative defenses in his answer, you must be ready to counter them at trial.



As we have emphasized, trying to assess and counter these defenses can be extremely risky unless you are experienced in doing so. Even if you otherwise feel competent to conduct your own trial, you should bring in a lawyer to help you with this aspect of the case. (See "Should You Hire an Attorney?" above.)

### **Habitability Defense**

The "habitability defense" is commonly raised in evictions for nonpayment of rent. If the tenant's Answer states that his rent payment was partly or entirely excused

because you kept the property in poor repair, you should first read Chapter 11 in *The California Landlord's Law Book: Rights & Responsibilities*, on landlords' duties to keep rental property in good repair. If in fact you haven't properly maintained the property, the tenant may win the lawsuit. To win, the tenant must prove to the judge that you "breached" (violated) a "warranty," which is implied by law, to provide the tenant with "habitable" (reasonably livable) premises in exchange for the rent. You don't have to prove that you properly maintained the property; rather, the tenant has to prove to the judge's satisfaction that you didn't make needed repairs.

To establish that you breached the implied warranty of habitability, the tenant must prove all of the following:

- You failed to provide one or more of the minimum "tenantability" requirements, including waterproofing, a working toilet, adequate heating and electricity, and hot and cold running water. (Civ. Code § 1941.1.)
- The defects were serious and substantial.
- The tenant or some other person (such as a health department inspector) notified you (or your manager) about the defect before you served the three-day notice to pay rent.
- You failed to make repairs within a reasonable time.

Once the tenant makes the showing described above, you must show a valid excuse for allowing the deficiency to continue. If you can convince the judge that the problems the tenant is complaining about are either non-habitability-related (such as old interior paint, carpets, or drapes) or minor (dripping but working faucets, cracked windows, and so on.), or that the tenant didn't complain until receiving the three-day notice, you will have knocked one or more holes in the tenant's habitability defense.

If the tenant produces evidence showing that you failed to make required repairs within 60 days after receiving written notice to do so from a health department or other official following an inspection of the property by that person, the burden shifts to you to show that you had a good reason for not making the repair. (See *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 11.) (Civ. Code § 1941.3.)

## Other Defenses

Other defenses tenants often raise include:

- discrimination on the basis of race, sex, or children (see *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 9)
- retaliation for the tenant's exercise of a legal right such as complaining to the building inspector or organizing other tenants (see *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 15)
- the landlord's breach of an express promise to make repairs, or other misconduct, or
- failure to comply with the requirements of a local rent control ordinance (see *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 4, and your "home" chapter—either Chapter 2, 3, 4, or 5—in this volume).

## Preparing the Judgment Form

When you go to trial you should have a judgment form ready for the judge to sign if she rules in your favor. Below are instructions for filling out a judgment after trial, on the statewide Judgment—Unlawful Detainer form, together with a sample. Fill out the items in the heading and caption boxes, so as to include your name, address, and telephone number; the court's name and location; the names of the parties; and the case number, as you've done many times.

In the box containing the words "JUDGMENT—UNLAWFUL DETAINER," put an X in the boxes next to the words "By Court" and "After Court Trial." If no defendant appeared at trial, also put an X in the box next to the words "Defendant Did Not Appear at Trial."

**Item 1:** Leave this item blank.

**Item 2:** Put an X in this box. In 2a, list the date and time that trial occurred, together with the judge's name. In Item 2b, put an X next to the word "Plaintiff" and list your name. If any defendants showed up for trial, put an X next to "Defendant" and list the name of each defendant who appeared at trial. If any defendant appeared with an attorney, check the box next to "Defendant's attorney" and list his or her name on the right. If no defendant appeared at trial, put an X in Item 2c next to the words "defendant did not appear at trial."

Do not check box 2d unless anyone requested that the judge give a "statement of decision" before the judge pronounced judgment. (This is extremely rare.)

Turn the form over and list your and the defendants' names, and the case number, in the spaces at the top of the reverse side of the form.

**Item 3:** Put an X here and list your name and the names of all defendants.

**Item 4:** Put an X next to Plaintiff and list the complete rental property address.

**Item 5:** Do not put an X in this box unless you previously served a Prejudgment Claim of Right to Possession.

**Items 6 and 6a:** Put Xs in boxes 6 and 6a. In nonpayment or rent cases, put an X in box 6a(1) and list the past-due rent demanded in the three-day notice and in Item 10 and 17c of the Complaint. In cases not involving failure to pay rent, such as a termination of month-to-month tenancy based on a 30-day or 60-day notice, do not check box 6a(1) or fill in an amount. In all cases, put an X in box 6a(2) "holdover damages" and list the amount obtained by multiplying the daily rental value (requested in Complaint Item 11) by the number of days between the date indicated in Complaint Item 17f and the date to and including the trial. Leave box 6a(3) blank. Check box 6a(4) and indicate the amount of court costs. Do not fill in anything in (5)—we don't think any sums other than those in (1) through (4) can be awarded in an unlawful detainer action. (For the same reason, leave Item 8 blank.) Finally, add up the amounts and put that total in Item 6a(6).

**Item 6c:** Put an X next to the "rental agreement is canceled" box if the tenancy was month to month. Put an X next to the "lease is forfeited" box if the tenant had a fixed-term lease and he or she breached it by nonpayment of rent or another violation of the rental agreement.

UD-110	
<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address)</p> <div style="border: 1px solid black; padding: 5px; text-align: center; margin: 5px 0;">list your mailing address and phone number</div> <p>TELEPHONE NO.: _____ FAX NO. (Optional): _____</p> <p>E-MAIL ADDRESS (Optional): _____</p> <p>ATTORNEY FOR (Name): _____</p> <hr/> <p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b></p> <p>STREET ADDRESS: _____</p> <p>MAILING ADDRESS: _____</p> <p>CITY AND ZIP CODE: <div style="border: 1px solid black; padding: 2px 10px;">court, county, address, branch name</div></p> <p>BRANCH NAME: _____</p> <hr/> <p>PLAINTIFF: <div style="border: 1px solid black; padding: 2px 10px;">plaintiff's and defendants' names</div></p> <p>DEFENDANT: _____</p> <hr/> <p style="text-align: center;"><b>JUDGMENT—UNLAWFUL DETAINER</b></p> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> By Clerk  <input checked="" type="checkbox"/> By Court         </div> <div> <input type="checkbox"/> By Default  <input type="checkbox"/> Possession Only         </div> <div> <input checked="" type="checkbox"/> After Court Trial  <input type="checkbox"/> Defendant Did Not Appear at Trial         </div> </div>	<p style="text-align: center; font-size: small;">FOR COURT USE ONLY</p>          <p>CASE NUMBER: <div style="border: 1px solid black; padding: 2px 10px;">case number</div></p>

to be checked by hand, if defendant doesn't appear

**JUDGMENT**

1. ☐ **BY DEFAULT**
  - a. Defendant was properly served with a copy of the summons and complaint.
  - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
  - c. Defendant's default was entered by the clerk upon plaintiff's application.
  - d. ☐ **Clerk's Judgment** (Code Civ. Proc., § 1169). For possession only of the premises described on page 2 (item 4).
  - e. ☐ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
    - (1) ☐ plaintiff's testimony and other evidence.
    - (2) ☐ plaintiff's or others' written declaration and evidence (Code Civ. Proc., § 585(d)).
  
2. ☒ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
  - a. The case was tried on (date and time): 

list date and time of trial

  
 before (name of judicial officer): 

list name of judge or commissioner who heard case
  - b. Appearances by:
 

☒ Plaintiff (name each): 

list your name

☐ Plaintiff's attorney (name each):  

(1) \_\_\_\_\_

(2) \_\_\_\_\_

☐ Continued on Attachment 2b (form MC-025).

☒ Defendant (name each): 

list name(s) of defendant(s) who appear at trial

☒ Defendant's attorney (name each): 

check and list name(s) of any attorney(s) representing any defendant

(1) \_\_\_\_\_

(2) \_\_\_\_\_

☐ Continued on Attachment 2b (form MC-025).

  - c. ☒ Defendant did not appear at trial. Defendant was properly served with notice of trial.
  - d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

to be checked by hand, if defendants do appear at trial

to be checked by hand, if defendant doesn't appear

PLAINTIFF: <div style="border: 1px solid black; padding: 2px; text-align: center;">plaintiff's and defendants' names</div>	CASE NUMBER: <div style="border: 1px solid black; padding: 2px; text-align: center;">case number</div>
DEFENDANT:	

**JUDGMENT IS ENTERED AS FOLLOWS BY:**    ☒ **THE COURT**    ☐ **THE CLERK**

3. **Parties.** Judgment is

a. ☒ for plaintiff (*name each*): 

list plaintiffs' names(s)

and against defendant (*name each*): 

list all defendants' names, even those, if any, who defaulted

☐ Continued on *Attachment 3a* (form MC-025).

b. ☐ for defendant (*name each*):

4. ☒ Plaintiff    ☐ Defendant    is entitled to possession of the premises located at (*street address, apartment, city, and county*):

list complete address of the property

5. ☐ Judgment applies to all occupants of the premises including tenants, subtenants if any, and named claimants if any (Code Civ. Proc., §§ 715.010, 1169, and 1174.3).

check only if you used the optional prejudgment claim procedure in Ch. 6

6. **Amount and terms of judgment**

a. ☒ Defendant named in item 3a above must pay plaintiff on the complaint:

(1) <input type="checkbox"/> Past-due rent	\$	<div style="border: 1px solid black; padding: 5px;">list and check applicable past-due rent demanded in three-day notice and/or holdover (prorated daily) damages, and court costs, and total them</div>
(2) <input type="checkbox"/> Holdover damages	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other ( <i>specify</i> ):	\$	
(6) <b>TOTAL JUDGMENT</b>	\$	

b. ☐ Plaintiff is to receive nothing from defendant named in item 3b.

☐ Defendant named in item 3b is to recover costs: \$ \_\_\_\_\_ and attorney fees: \$ \_\_\_\_\_

c. ☐ The rental agreement is canceled.    ☐ The lease is forfeited.

check as applicable for eviction based on nonpayment or other breach

7. ☐ **Conditional judgment.** Plaintiff has breached the agreement to provide habitable premises to defendant as stated in *Judgment—Unlawful Detainer Attachment* (form UD-110S), which is attached.

8. ☐ **Other (*specify*):**

☐ Continued on *Attachment 8* (form MC-025).

Date: \_\_\_\_\_

JUDICIAL OFFICER

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

(SEAL)

**CLERK'S CERTIFICATE (Optional)**

I certify that this is a true copy of the original judgment on file in the court.

Date: \_\_\_\_\_

Clerk, by \_\_\_\_\_, Deputy

UD-110 [New January 1, 2003]

**JUDGMENT—UNLAWFUL DETAINER**

Page 2 of 2

UD-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) <b>LENNY D. LANDLORD</b> 1234 ANGELENO STREET LOS ANGELES, CA 90010 TELEPHONE NO.: 213-555-6789 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff in Pro Per		FOR COURT USE ONLY           CASE NUMBER: A-12345-B
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>LOS ANGELES</b> STREET ADDRESS: 110 N. Grand Avenue MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: LOS ANGELES DIVISION		
PLAINTIFF: <b>LENNY D. LANDLORD</b> DEFENDANT: <b>TERRENCE D. TENANT, ET AL</b>		
<b>JUDGMENT—UNLAWFUL DETAINER</b> <input type="checkbox"/> By Clerk <input type="checkbox"/> By Default <input checked="" type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> Possession Only <input type="checkbox"/> Defendant Did Not Appear at Trial		

## JUDGMENT

1. ☐ **BY DEFAULT**
- a. Defendant was properly served with a copy of the summons and complaint.
  - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
  - c. Defendant's default was entered by the clerk upon plaintiff's application.
  - d. ☐ **Clerk's Judgment** (Code Civ. Proc., § 1169). For possession only of the premises described on page 2 (item 4).
  - e. ☐ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
    - (1) ☐ plaintiff's testimony and other evidence.
    - (2) ☐ plaintiff's or others' written declaration and evidence (Code Civ. Proc., § 585(d)).
2. ☒ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
- a. The case was tried on (date and time): September 20, 20xx  
before (name of judicial officer): Julia Judge
  - b. Appearances by:
 

<input checked="" type="checkbox"/> Plaintiff (name each): Lenny D. Landlord	<input type="checkbox"/> Plaintiff's attorney (name each): (1) (2)
<input type="checkbox"/> Continued on Attachment 2b (form MC-025).	
<input checked="" type="checkbox"/> Defendant (name each): Terrence D. Tenant, Tillie D. Tenant	<input type="checkbox"/> Defendant's attorney (name each): (1) (2)
<input type="checkbox"/> Continued on Attachment 2b (form MC-025).	
  - c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
  - d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

PLAINTIFF: LENNY D., LANDLORD DEFENDANT: TERRENCE D. TENANT, ET AL	CASE NUMBER: A-12345-B
---	---------------------------

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK

3. **Parties.** Judgment is

a. ☒ for plaintiff (*name each*): Lenny D. Landlord

and against defendant (*name each*): Terrence D. Tenant, Tillie D. Tenant

☐ Continued on *Attachment 3a* (form MC-025).

b. ☐ for defendant (*name each*):

4. ☒ Plaintiff ☐ Defendant is entitled to possession of the premises located at (*street address, apartment, city, and county*):  
 6789 Angel Street, Apt. 10, Los Angeles, Los Angeles County

5. ☐ Judgment applies to all occupants of the premises including tenants, subtenants if any, and named claimants if any (Code Civ. Proc., §§ 715.010, 1169, and 1174.3).

6. **Amount and terms of judgment**

a. ☒ Defendant named in item 3a above must pay plaintiff on the complaint:

(1)	<input checked="" type="checkbox"/> Past-due rent	\$	900.00
(2)	<input checked="" type="checkbox"/> Holdover damages	\$	220.00
(3)	<input type="checkbox"/> Attorney fees	\$	
(4)	<input checked="" type="checkbox"/> Costs	\$	110.00
(5)	<input type="checkbox"/> Other ( <i>specify</i> ):	\$	
(6) <b>TOTAL JUDGMENT</b>		\$	1,230.00

b. ☐ Plaintiff is to receive nothing from defendant named in item 3b.

☐ Defendant named in item 3b is to recover costs: \$  
☐ and attorney fees: \$

c. ☒ The rental agreement is canceled. ☐ The lease is forfeited.

7. ☐ **Conditional judgment.** Plaintiff has breached the agreement to provide habitable premises to defendant as stated in *Judgment—Unlawful Detainer Attachment* (form UD-110S), which is attached.

8. ☐ **Other** (*specify*):

☐ Continued on *Attachment 8* (form MC-025).

Date: ☐ \_\_\_\_\_  
 JUDICIAL OFFICER

Date: ☐ Clerk, by \_\_\_\_\_, Deputy

(SEAL)

**CLERK'S CERTIFICATE** (*Optional*)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by \_\_\_\_\_, Deputy

## Preparing the Judgment When You've Partially Won—Or Lost

Customarily, the party who wins prepares the judgment. The instructions above are based on the assumption that you, the landlord, will win the case after trial—something that happens in the great majority of contested cases. But if the judge allows the tenant to stay and pay reduced rent because you breached the warranty of habitability, even though you're not a clear victor, you'll still need to fill out the judgment form. And if, heaven forbid, you lose outright, you may still be asked by the judge to prepare the judgment. In either event, here are a few pointers:

**Partial victory for the tenant on the issue of breach of warranty of habitability.** Suppose the tenant claimed he owed none of the \$1,000 monthly rent because of a leaky roof, but the judge said he owed \$500 and could stay if he pays that reduced amount within five days. Fill out the form as instructed above, but check Item 7 ("Conditional Judgment"). You'll have to fill out another form, Judgment—Unlawful Detainer Attachment, and attach it to the Judgment form. We include a blank form of this type in Appendix 3, but we hope you won't have to use it.

**Total victory for the tenant.** If the tenant prevails, check Item 3d, and in Item 4, check the box next to "defendant." Leave Item 6a blank, and check Item 6b ("plaintiff is to recover nothing from defendant ....").



A blank, tear-out version of the Judgment After Trial is in Appendix 3. The CD-ROM also includes this form. Instructions for using the CD are in Appendix 2.

## The Trial

As the plaintiff, you have the burden of proving to the judge (or jury if it's a jury trial) that you are entitled to the relief requested in your Complaint. You present your case first.

Much of your case will consist of two types of evidence: your testimony, and documents that you offer to prove one or more of your points. In addition, you may want to bring in witnesses.

Once you have met your "burden of proof," it is the tenant's turn. To defeat your case the tenant must offer testimony and/or documents to:

- convince the judge (the jury, if it's a jury trial) that your proof on one or more issues was wrong or deficient, or
- prove that one of her affirmative defenses is valid.

After the tenant has put on her case, you will have an opportunity to rebut the tenant's case. After your rebuttal, both you and the tenant can summarize your cases. The case is then submitted to the judge or jury for its verdict. If you win, you will be entitled to evict the tenant unless the tenant appeals the verdict and obtains a stay of the eviction pending the appeal. Also, it is possible for the tenant to request a new trial and an order barring the eviction because of hardship.

Now let's take a minute to go into a little more detail on the procedures outlined above.

## Don't Send Your Manager to Court

If you handle your case yourself, without an attorney, don't make the mistake of sending your manager or other agent to court when your case is heard. Although a manager or agent can appear in court to testify, the plaintiff (the property owner) who represents himself *must* appear at trial to present the case. If the owner who represents himself does not appear at trial, and sends a manager or other agent instead, the judge may refuse to proceed further.

If you have an attorney, the attorney may appear on your behalf, although a judge has the authority to demand your presence.

## The Clerk Calls the Case

The trial begins when the clerk calls your case by name, usually by calling out the last name of the parties (for example, in the case of *Lenny D. Landlord v. Terrence and Tillie Tenant*, "*Landlord v. Tenant*"). As mentioned, since you're the plaintiff, you present your case first, when the judge asks you to begin.



## Last-Minute Motions

Before you begin your case, the tenant may make a last-minute motion, perhaps for a continuance or postponement of the trial, or to disqualify the judge. A party to a lawsuit is allowed to disqualify one judge—sometimes even at the last minute—simply by filing a declaration under penalty of perjury that states a belief that the judge is prejudiced. (C.C.P. § 170.6.) Unlawful detainer defendants frequently use this procedure to disqualify judges notoriously unsympathetic to tenants' defenses or sometimes just to delay things. Landlords rarely use this procedure, even against somewhat pro-tenant judges, due to their desire to get the trial moving.

It isn't too likely that the judge will agree to postpone the trial. If the tenant disqualifies the judge, however, the case must be transferred to another judge or postponed if no other judge is available.

Another frequent last-minute motion is one to "exclude witnesses." If you or the tenant so requests, witnesses (but not parties) will be required to leave the courtroom until it's their turn to testify. This prevents witnesses from patterning their testimony after other witnesses on their side they see testify. If you are your only witness and the tenant comes in with a string of friends to testify to what a slumlord you are, you can at least minimize the damage by insisting that each be kept out while the others testify. Remember, however, that a motion to exclude works both ways. If you ask the judge to exclude the tenant's witnesses, your witnesses must also wait in the corridor.

## Opening Statements

Both you and the tenant have a right to make an opening statement at the start of the trial. Chances are that the judge has heard many cases like yours, so that an opening statement would be a fruitless exercise. If you do make a statement, keep it very brief. Say what you're going to prove, but don't start proving it, and above all, don't argue all the points. Here's what an opening statement in a nonpayment of rent case might sound like:

### The Courtroom

Unlawful detainer trials are conducted in courtrooms that look much like those on television. In addition to the judge, a clerk and bailiff are normally present. They sit at tables immediately in front of the judge's elevated bench, or slightly off to the side. The clerk's job is to keep the judge supplied with the necessary files and papers and to make sure that the proceedings flow smoothly. A clerk is not the same as a court reporter, who keeps a word-by-word record of the proceedings. In courtrooms where eviction cases are heard, a reporter is not present unless either party insists on (and pays for) one. The bailiff, usually a uniformed deputy sheriff or marshal, is present to keep order.

Courtrooms are divided about two-thirds of the way toward the front by a sort of fence known as "the bar." The judge, court personnel, and lawyers use the area on one side of the bar, and the public, including parties and witnesses waiting to be called, sits on the other side. You're invited to cross the bar only when your case is called by the clerk, and any witnesses you have may do so only when you call them to testify. You then come forward and sit at the long table (the one closest to the empty jury box) known as the "counsel table," facing the judge.

"Your Honor, this is an unlawful detainer action based on nonpayment of rent. Mr. Tenant's Answer admits the fact of the lease, and that the monthly rent is \$550, due on the first of the month, but denies everything else. I will testify to my receipt of previous rents, so that the balance due the day the three-day notice was served was \$550. I will also testify that I served the three-day notice to pay rent or quit on Mr. Tenant, who was never home or at work when I went there, by posting a copy of it on the door and mailing a second copy to his home, and that later when I called him he admitted having received it. Finally, I will testify that he didn't pay the rent within three days after that, and, of course, is still in possession."



## Presenting Your Case

There are two ways you can offer testimony to prove the disputed elements of your case. The most common is to testify yourself.

As you may know from old Perry Mason episodes, parties to lawsuits usually testify in response to questions posed by their own lawyer. This is called “direct examination” (as opposed to “cross-examination,” when the other side asks you questions). If you represent yourself this is done by simply recounting the relevant facts.

Your testimony should be very much like that you would give at a default hearing. (See Chapter 7.) If the tenant’s Answer admits certain of your allegations, such as the basic terms of the tenancy or service of the three-day or other termination notice, you can leave that part out, having noted in your opening remarks that it’s not disputed.

After you’ve finished testifying, the tenant or her lawyer may cross-examine you. The general rule is that you, like any other witness, can be cross-examined on anything relating to your testimony on direct examination. You should respond courteously, truthfully, and as briefly as possible. Contrary to popular myth, you don’t have to give a “yes” or “no” answer to any question for which it would be inappropriate. You have a right to explain and expand on your answer in detail if you feel it’s necessary. For example, the question, “Have you stopped pocketing security deposits?” is best answered by, “I have never ‘pocketed’ a deposit,” rather than by “yes” or “no.”

Don’t appear hostile toward the person doing the cross-examining; it could hurt your case. If you have a lawyer, he has the right to object to any question that is abusive or irrelevant. If you are representing yourself and consider a question to be particularly awful, ask the judge if you have to answer it.

**EXAMPLE:** After you’ve finished testifying, the tenant begins cross-examining you with, “Ms. Landlord, didn’t you remember my telling you I couldn’t pay the rent because I lost my job?” Since the issue of the tenant’s hardship isn’t a legal defense to failure to pay rent, it’s legally irrelevant, and your lawyer should say, “Your Honor, I object to this question as irrelevant.” The judge should “sustain” this objection, meaning you don’t have to answer.

If the case is tried by a judge, objections on the ground of relevancy are often overruled by the judge, who figures her training equips her to sort out the wheat from the chaff when decision time comes around. This discrepancy between legal rules and the real world is one example among thousands of why doing your own trial is not advised.

Another way to prove part or all of the disputed elements of your case is by questioning the tenant at the start. The law allows you to call the defendant as a witness before you or any of your own witnesses testify. (Evid. Code § 776.)

Handled properly, the tenant will testify truthfully, if reluctantly, so as to establish most or all of the basic elements of your lawsuit, even if he denied these elements in the answer. Here’s an example of such an exchange:

Landlord: *Mr. Tenant, you rented the premises at 123 State Street, Los Angeles, from me, didn’t you?*

Tenant: *Yes.*

Landlord: *And that was in March 20xx, correct?*

Tenant: *Yes.*

Landlord: *I’d like to show you a copy of this document entitled “Rental Agreement,” attached as Exhibit “A” to the Complaint. This is your signature here at the bottom, isn’t it?*

Tenant: *Well ... ah.*

Landlord: *You paid the monthly rent of \$550 until August 20xx, didn’t you?*

Tenant: *Well, yeah, but in July I got laid off, and ...*

Landlord: *Please just answer the question, Mr. Tenant.*

Tenant: *Yeah.*

Landlord: *And you didn’t pay the \$550 rent in August 20xx, did you?*

Tenant: *Well, no.*

Landlord: *And I’d like to show you a copy of this document entitled “Three-Day Notice to Pay Rent or Quit” attached as Exhibit “B” to the Complaint. You told me on August 5 when I phoned you that you received the notice, didn’t you?*

Tenant: *Yeah.*

Landlord: *And you, in fact, did receive it, correct?*

Tenant: *Yes.*

\* \* \* Free Preview End \* \* \*

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