

Scope of Guide

This Action Guide is a succinct, procedural roadmap for unlawful detainer actions. It explains how to determine if an unlawful detainer action is appropriate, including eviction after foreclosure sale; details the process for compliance with 3-day, 30-day, 60-day, and 90-day notice requirements; and outlines how to proceed from filing a complaint through levying on a writ of possession. It also outlines the tenant's available strategies and defenses at each stage, including the Prejudgment Claim of Right to Possession, and discusses alternatives available to the landlord on the tenant's bankruptcy.

Abbreviations

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|----------------------------|--|
| Civ App Prac | <u>California Civil Appellate Practice (3d ed Cal CEB 1996)</u> |
| Civ Proc Before Trial | <u>California Civil Procedure Before Trial (4th ed Cal CEB 2004)</u> |
| Eviction Defense Man | <u>California Eviction Defense Manual (2d ed Cal CEB 1993)</u> |
| Judicial Council Forms Man | <u>California Judicial Council Forms Manual (Cal CEB 1981)</u> |
| Landlord-Tenant | <u>California Landlord-Tenant Practice (2d ed Cal CEB 1997)</u> |
| Trial Objections | <u>California Trial Objections (Cal CEB Annual)</u> |
| Civ Proc During Trial | <u>California Trial Practice: Civil Procedure During Trial (3d ed Cal CEB 1995)</u> |
| Creating Plan | <u>Creating Your Discovery Plan (Cal CEB Action Guide February 2007)</u> |
| Money Judgments | <u>Enforcing Civil Money Judgments (Cal CEB Action Guide November 2006)</u> |
| Civil Appeals | <u>Handling Civil Appeals (Cal CEB Action Guide November 2005)</u> |
| Motions to Compel | <u>Handling Motions to Compel and Other Discovery Motions (Cal CEB Action Guide March 2007)</u> |
| Service of Process | <u>Handling Service of Process (Serving Summons in Civil Proceedings) (Cal CEB Action Guide November 2006)</u> |
| Subpoenas | <u>Handling Subpoenas (Cal CEB Action Guide December 2006)</u> |
| Laying a Foundation | <u>Laying a Foundation to Introduce Evidence (Preparing and Using Evidence at Trial) (Cal CEB Action Guide April 2006)</u> |
| Summary Judgment | <u>Making and Opposing a Summary Judgment Motion (Cal CEB Action Guide October 2005)</u> |
| Moving for Relief | <u>Moving for Relief From an Automatic Stay in Bankruptcy (Cal CEB Action Guide September 2006)</u> |
| Writ of Attachment | <u>Obtaining a Writ of Attachment (Cal CEB Action Guide December 2006)</u> |
| Writ of Possession | <u>Obtaining a Writ of Possession (Cal CEB Action Guide August 2004)</u> |
| Obtaining Discovery | <u>Obtaining Discovery: Initiating and Responding to Discovery Procedures (Cal CEB Action Guide March 2007)</u> |
| Office Leasing | <u>Office Leasing: Drafting and Negotiating the Lease (Cal CEB 1996)</u> |
| Security Interests | <u>Taking Security Interests in Personal Property (Cal CEB Action Guide June 2005)</u> |

DAVID M. GUREWITZ lives in Kauai and practices law as a sole proprietor in California. He received his B.S. in Business Administration from the University of Minnesota in 1973 and his J.D. from the University of California (Los Angeles) in 1977. Since that time, Mr. Gurewitz's practice has concentrated on handling transactional and litigation matters in the real estate, business, and commercial law areas.

Mr. Gurewitz has acted as a consultant on three other CEB Action Guides: Obtaining a Writ of Attachment, Obtaining a Writ of Possession, and Handling Real Property Sales Transactions

WENDY ST. JOHN has practiced landlord-tenant law in San Diego, California since 1983. She received her Bachelor of Arts from the University of Michigan, and her J.D. from the University of San Diego. She is a partner with the law firm of Kimball, Tirey & St. John, which started in San Diego and now has offices throughout California. Ms. St. John is the supervising partner for her firm's Collection Division, which handles judgment and nonjudgment collection matters. She is the author of numerous articles on landlord-tenant law for rental housing publications in California and is a frequent speaker on landlord-tenant law for apartment associations and local colleges and universities.

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Before Taking Action

STEP 1. DETERMINE WHETHER UNLAWFUL DETAINER ACTION IS APPROPRIATE

DEFINITION

"Unlawful detainer" is an expedited statutory procedure under CCP §§1161-1179a that generally:

- a. Permits landlord or its successor to regain possession of premises occupied by tenant or other occupant;
- b. Permits new owner to obtain possession following foreclosure or execution sale; and
- c. Applies to tenant or occupant whose right to possession has lawfully terminated.

Further Research: For discussion on nature and applicability of unlawful detainer remedy, see California Landlord-Tenant Practice §§9.2-9.12 (2d ed Cal CEB 1997), referred to throughout this Action Guide as Landlord-Tenant.

POTENTIAL RECOVERY

Plaintiff may recover:

- a. Possession of premises;
- b. Unpaid rent accrued for up to 1 year (but only if unlawful detainer action is based on 3-day notice to pay rent or quit under CCP §1161(2));
- c. Damages based on "reasonable rental value" of premises, from date unlawful detention begins;
- d. Statutory damages of up to \$600 (see CCP §1174(b));
- e. Court costs;
- f. Interest; and
- g. Attorney fees, *if* provided for in the agreement or a statute.

POSSIBLE ALTERNATIVE REMEDIES

Analyze whether less expensive, less time-consuming remedies, such as removing a trespasser or establishing abandonment, are available to landlord.

REMOVE TRESPASSER

WHEN AVAILABLE

This remedy is available if a trespasser occupies premises.

Example: Tenant in month-to-month tenancy dies and mother continues to make rental payments for 4 years. Tenancy is terminated by notice of tenant's death as of the 30th day following tenant's last rent payment. Mother's occupancy is a trespass, and she is not entitled to notice of termination. See Miller v Desatnik Mgmt. Co. v Bullock (1990) 221 CA3d Supp 13, 18, 270 CR 600.

NOTE

Under some rent control jurisdictions, certain "trespassers" may be acknowledged as "tenants." See, *e.g.*, Pick v Cohen (2000) 83

CA4th Supp 6, 100 CR2d 839 (upheld ordinance that prohibits additional occupant, such as surviving close relative or domestic partner of original tenant, from being evicted if landlord had knowledge of additional occupant and that occupant lived in premises for more than 1 year before original tenant died).

WHAT TO DO

- a. Establish that occupant is not tenant under applicable rent control law;
- b. Ascertain whether police will remove; and
- c. If so, request that they remove trespasser from the premises.

ESTABLISH ABANDONMENT

WHEN AVAILABLE

This remedy is available if tenant is not in possession and does not intend to retake possession.

WHAT TO DO

Advise landlord that he or she may retake possession after establishing tenant's abandonment. Landlord establishes tenant's abandonment by (CC §1951.3):

- a. Serving a Notice of Belief of Abandonment *if* (CC §1951.3(b)); see *Martin v Cassidy* (1957) 149 CA2d 106, 110, 307 P2d 981):
 - (1) Landlord reasonably believes that tenant abandoned property; and
 - (2) Rent has been due for at least 14 consecutive days;
- b. Taking possession 18 days after mailing the Notice of Belief of Abandonment (or 15 days after personal service) if tenant does not give written notice of (CC §1951.3(a)):
 - (1) Intent not to abandon; and
 - (2) An address at which tenant may be served by certified mail in any action for unlawful detainer of the real property; and
- c. Adhering strictly to statutory procedures to avoid any charge of wrongful eviction.

EFFECT

Even if tenant successfully opposes landlord's attempts to establish abandonment, landlord can still proceed with unlawful detainer action.

Sample Form: For sample Notice of Belief of Abandonment, see App A.

Further Research: See Landlord-Tenant, chap 8; California Eviction Defense Manual §§3.4, 11.18 (2d ed Cal CEB 1993), referred to throughout this Action Guide as Eviction Defense Man.

AVOID UNLAWFUL "SELF-HELP"

CAUTION LANDLORD

Caution landlord against using impermissible forms of "self-help" (see generally Eviction Defense Man, chap 3), *e.g.*:

- a. Forcible entry (CCP §1159);
- b. Forcible detainer (CCP §1160);
- c. Harassment intended to influence tenant to vacate dwelling (CC §1940.2);

d. Interruption or termination of utilities (CC §789.3(a)); or

e. Lockout (CC §789.3(b)(1)).

NOTE

Counsel landlord about good faith standards in eviction-controlled areas; local ordinances are amended and challenged frequently. See, e.g., *Action Apartment Ass'n v City of Santa Monica* (2007) 41 CA4th 1232, 63 CR3d 398 (landlord who serves eviction notice is only protected by litigation privilege if unlawful detainer action is contemplated in good faith); *Baba v Board of Supervisors of City & County of San Francisco* (2004) 124 CA4th 504, 21 CR3d 428.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/Before Taking Action/STEP 2. DETERMINE WHEN UNLAWFUL DETAINER ACTION IS AVAILABLE

STEP 2. DETERMINE WHEN UNLAWFUL DETAINER ACTION IS AVAILABLE

WHEN AVAILABLE TO LANDLORD

Landlord can pursue unlawful detainer action when:

Lease Expires

Fixed-term lease expires and tenant holds over (CCP §1161(1)):

After Lease Expires:

- a. Advise landlord to avoid accepting any rent, including partial payment, to avoid creating a month-to-month tenancy with no unlawful holdover.
- b. If landlord creates a month-to-month tenancy by accepting rent, landlord may proceed with unlawful detainer against month-to-month tenant after serving a 30-day or 60-day notice. See step 8, below.

Before Lease Expires:

Landlord may accept rent for a period extending beyond expiration of the lease and not create a month-to-month tenancy. See City v Hart (1985) 175 CA3d 92, 95, 220 CR 349.

Landlord Terminates Month-to-Month Tenancy

Landlord terminates month-to-month tenancy by serving 30-day or 60-day notice under CC §1946 or §1946.1, and tenant holds over. CCP §1161(1). Note that, effective January 1, 2007, and only until January 1, 2010, CC §1946.1 requires 60-day notice to terminate tenancy of month-to-month residential tenant living in rental unit for 1 year or more (except if landlord sells dwelling to bona fide purchaser intending to reside in it and specified conditions are met). New legislation was introduced in 2009 to extend the expiration date.

NOTE

Even when there is no requirement that landlord state a reason for termination in the notice, tenant still may defend unlawful detainer action by claiming that the notice was served for retaliatory or discriminatory reasons. See Landlord-Tenant, chaps 2, 8, 10, 12. Also, landlord may not base an eviction solely on a law that requires water heaters to be braced to protect against earthquake movement. Health & S C §19211(c).

Tenant Gives Notice

Tenant gives landlord written notice of intent to vacate on specified date under CC §1946 but then fails to deliver possession on that date. CCP §1161(5). For tenants' available methods of terminating tenancy, see CC §§1946, 1946.1, 1946.7. See also Landlord-Tenant §8.20.

Tenant Breaches Lease

Tenant does any of the following:

- a. Defaults on rent obligation (CCP §1161(2)).

NOTE

Advise landlord that he or she cannot seek to recover rent overdue by more than 1 year in an unlawful detainer action. See CCP §1161(2).

- b. Breaches a covenant or condition of lease, other than payment of rent (CCP §1161(3)).
- c. Assigns, sublets, or commits waste in violation of lease; commits nuisance; commits acts of domestic violence, sexual assault, or

stalking; or uses premises for unlawful purpose (CCP §1161(4)).

NOTE

Effective January 1, 2009, if a person commits an act of domestic violence, sexual assault, or stalking against another tenant or subtenant on the premises, there is a rebuttable presumption that the person has committed a nuisance. This does not apply if the victim or a household member of the victim, other than the perpetrator, has not vacated the premises. So if the victim vacates the premises and the perpetrator remains in possession, landlord is entitled to the presumption. CCP §1161(4). These new provisions remain in effect only until January 1, 2012, unless a statute deletes or extends that date.

Landlord Removes Former Employee

Landlord seeks to remove employee, agent, or licensee from premises after that relationship has been terminated. CCP §1161(1).

NOTE

Examine employment agreements for clauses delineating a time period in which an employee is required to vacate the premises after termination of employment. See Landlord-Tenant §4.48.

WHEN AVAILABLE TO PURCHASER AFTER SALE OR FORECLOSURE

Purchaser of real property after sale or foreclosure may use unlawful detainer action to evict former owner or tenant of former owner. However, unlawful detainer does not usually apply to nondefaulting tenant holding possession:

- a. After voluntary sale under unexpired lease (see *Rosenkranz v Pellin* (1950) 99 CA2d 650, 222 P2d 249; California Real Property Sales Transactions §§4.71-4.76 (4th ed Cal CEB 2007)); or
- b. After foreclosure under lease that predates mortgage (see "When Lease Predates Mortgage," this step, below).

Evicting Former Owner or Commercial Tenant

Purchaser of property at voluntary sale, execution sale, sale by judicial foreclosure, or sale under power of sale in mortgage or deed of trust seeks to remove former owner or former owner's commercial tenant from premises. Under CCP §1161a(b), a 3-day notice is required.

NOTE

After a voluntary sale, CCP §1161a(b)(4) permits purchaser to evict seller holding over after close of escrow, and a 3-day notice applies whether property is commercial or residential. See CCP §§1161a(c), 1161b(b).

Evicting Residential Tenant of Former Owner

Purchaser of property at voluntary sale, execution sale, sale by judicial foreclosure, or sale under power of sale in mortgage or deed of trust seeks to remove former owner's residential tenant from premises.

- a. Under CCP §1161a(c), a 30-day notice is required, *except*
- b. Under CCP §1161b, following a foreclosure, a 60-day notice must be served by the foreclosure purchaser on residential tenants of the former owner. This section does not apply to foreclosures on owner-occupied property. CCP §1161b(b). See Landlord-Tenant, chap 8; Eviction Defense Man, chap 20.

NOTE

Civil Code §1161b remains in effect only until January 1, 2013, unless a statute deletes or extends that date.

When Lease Predates Mortgage

If a commercial or residential lease predates the mortgage, the lease will remain in effect after foreclosure, and it may not be terminated by either 3-day or 60-day notice unless the lease was subordinated to the mortgage. See *Aviel v Ng* (2008) 161 CA4th 809, 74 CR3d 200. See also Landlord-Tenant, chap 8. On lease provisions affecting priority of leases and mortgages, see California Mortgages, Deeds of Trust, and Foreclosure Litigation, chap 6 (4th ed Cal CEB 2009).

EFFECT OF SPECIAL REQUIREMENTS OR LIMITATIONS

Determine for landlords additional requirements or limitations on prefiling notices and unlawful detainer proceedings:

Domestic Violence in Subsidized Housing

In Section 8 housing, ascertain whether tenant engaged in criminal acts of violence against a family or other household member. Landlord may evict such individuals without evicting any victim of such violence. 42 USC §1437f(c)(9). Landlord may not evict a victim or family member of a victim of domestic assault on the basis of the nuisance conduct of the abusing family member.

Subsidized Housing Eviction Requirements

Ascertain whether the tenancy is subsidized through Section 8 Housing Choice Voucher programs (42 USC §1437f; see Landlord-Tenant §§2.13, 2.16-2.17), tax credits (see Landlord-Tenant §2.18A), or other low-income housing programs. Review lease and applicable regulations for additional requirements or limitations on prefiling notices and unlawful detainer proceedings. For detailed discussion, see Eviction Defense Man, chap 18.

Local Rent and Eviction Control Ordinances

a. Review local rent control or other ordinances for additional requirements or restrictions on unlawful detainer action (see generally Landlord-Tenant, chap 7; Eviction Defense Man, chap 17), *e.g.*:

- (1) Controlling amount of legally chargeable rent;
- (2) Limiting permissible grounds for eviction; or
- (3) Adding to requirements for termination notice and complaint;

b. Review special notice and other procedures under the Ellis Act (Govt C §§7060-7060.7) if landlord seeks to evict residential tenants to take entire building off rental market, *i.e.*, go out of business (see Landlord-Tenant, chap 7; on defending Ellis evictions, see Eviction Defense Man, chap 17); and

c. Affirmatively plead that landlord complied with local ordinances (see step 11, below; Box 14 in Complaint—Unlawful Detainer (Judicial Council Form UD-100), reprinted in App F).

Lease Provisions

Ascertain whether and how lease or rental agreements and any communications between landlord and tenant affect or limit landlord's right to proceed with unlawful detainer action. For further discussion, see Landlord-Tenant, chaps 4-5.

Franchise or Petroleum Distributor Agreements

Comply with "good cause" requirement if landlord is:

- a. Franchisor terminating franchise or lease (Bus & P C §20020); or
- b. Petroleum dealer suing for unlawful detainer (CCP §1174(a); Bus & P C §20999.1; 15 USC §§2801, 2804; *E.S. Bills, Inc. v Tzucanow* (1985) 38 C3d 824, 215 CR 278).

Further Research: See Landlord-Tenant, chaps 7-8; Eviction Defense Man, chaps 15-19.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/Before Taking Action/STEP 3. ASCERTAIN WHETHER UNLAWFUL DETAINER ACTION BENEFITS LANDLORD

STEP 3. ASCERTAIN WHETHER UNLAWFUL DETAINER ACTION BENEFITS LANDLORD

DETERMINE LANDLORD'S MOTIVES

Ascertain whether the basis for landlord's pursuing unlawful detainer action is emotional or financial, *i.e.*:

- a. Help landlord recognize that financial reasons, not anger or frustration with tenant, should underlie action;
- b. Verify that landlord's motive does not violate state or federal law (*e.g.*, retaliatory eviction, discrimination) or local just-cause or rent control ordinances;
- c. Analyze whether landlord could remedy problems without litigation, *e.g.*, whether this is a proper case for a meeting between parties to explain positions and explore informal resolution; and
- d. Determine whether previous litigation will have a res judicata effect on a potential unlawful detainer action. See *Gombiner v Swartz* (2008) 167 CA4th 1365, 85 CR3d 83.

DETERMINE OBJECTIVES

Learn what landlord seeks (on negotiation, see generally Eviction Defense Man, chap 9), *e.g.*:

- a. *All* back rent and vacation of premises (if so, give nonforfeiture notice (see step 6, below));
- b. *Only* vacation of premises by tenant (if so, use forfeiture notice; for discussion, see "If Appropriate, Declare Intent to Forfeit," step 6, below); or
- c. *Only* back rent (tenant may remain if paid) (if so, negotiate an acceptable agreement with tenant and do not proceed with unlawful detainer).

EVALUATE ECONOMICS OF court ACTION

ASSESS COSTS AND BENEFITS

- a. Review anticipated expenses of unlawful detainer proceeding:
 - (1) Estimate litigation costs, including execution of judgment (may be difficult);
 - (2) Calculate landlord's attorney fees and investigate whether lease allows fees to prevailing party and if recovery of fees from tenant is likely; *and*
 - (3) Factor in landlord's willingness and ability to invest time and emotional energy in litigation, particularly if tenant raises numerous or strong defenses.
- b. Examine landlord about potential tenant defenses to unlawful detainer action (see step 25, below) and their likelihood of success.
- c. Estimate overall likelihood of success in eviction and monetary value of probable gains.

Further Research: See Landlord-Tenant §§9.22-9.29; chap 10.

DETERMINE SCOPE OF attorney REPRESENTATION

Limited Scope Representation

- a. Discuss with client possibility of limited scope representation (unbundling), a relationship between attorney and client in which scope of services provided by counsel is limited to specific tasks.
- b. To assist attorneys, the State Bar of California has created guidelines. See Landlord-Tenant §§4.2A-4.2B, 5.4A-5.4B.
- c. Unlawful detainer actions are a prime area for unbundled legal services. Although tenants are more likely to use unbundling, low-income landlords may also benefit from it.
- d. While communication between an attorney and an unrepresented adverse party is not prohibited, if the attorney is aware that the adverse party may have been assisted by counsel who is not counsel of record, the attorney should clarify that fact and tell the opposing party not to reveal the content of any communications with counsel. McMillan v Shadow Ridge at Oak Park Homeowner's Ass'n (2008) 165 CA4th 960, 81 CR3d 550.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/Before Taking Action/STEP 4. CONSIDER ENTERING INTO STIPULATION FOR ENTRY OF JUDGMENT

STEP 4. CONSIDER ENTERING INTO STIPULATION FOR ENTRY OF JUDGMENT

DEFINITION

A stipulation for entry of judgment is a settlement agreement that is or may be filed with the court.

WHAT IT PROVIDES

Stipulation for entry of judgment usually provides that landlord will not obtain judgment unless tenant defaults on certain conditions specified in stipulation.

NOTIFY COURT

Court, all parties, and any court-connected arbitrator or ADR neutral must be notified in writing of any settlement or other disposition by each party seeking affirmative relief. Oral notice must also be given if settlement occurs within 10 days of a hearing, conference, or trial. See Cal Rules of Ct 3.1385. See mandatory Notice of Settlement of Entire Case (Judicial Council Form CM-200).

BENEFITS

Stipulation affords landlord a way to obtain judgment if tenant does not meet conditions, and it protects tenant from having judgment entered if all conditions are met. Sometimes the stipulation provides that judgment be entered immediately for possession and/or money.

NOTE

Obtaining from tenant a separate release of claims that tenant may have against landlord may be advisable. See Landeros v Pankey (1995) 39 CA4th 1167, 46 CR2d 165.

RISKS

If tenant is acting in pro per, you may have difficulty enforcing a stipulated judgment. See Little v Sanchez (1985) 166 CA3d 501, 505, 213 CR 297.

Sample Form: For sample Stipulation to Judgment for Possession and Money, see App L. See also Stipulation for Entry of Judgment (Unlawful Detainer) (Judicial Council Form UD-115).

Further Research: See Landlord-Tenant, chaps 5, 9; Eviction Defense Man §§9.10, 12.9-12.10, 26.18, 26.42.

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Satisfying Preliminary Notice Requirements

STEP 5. REVIEW STRICT TECHNICAL NOTICE REQUIREMENTS

AVOID FATAL ERRORS

- a. Summary nature of action means even a small error can invalidate termination notice (see Landlord-Tenant, chaps 8-10).
- b. Courts *strictly* construe and *strictly* enforce notice requirements.
- c. Tenant may prevail on pretrial motions or successfully defend action at trial if notice demands monetary payment that is not allowed by law or lease (see Landlord-Tenant, chap 10).
- d. Type of notice (*e.g.*, 3-day, 30-day, 60-day, 90-day) that landlord is required to give depends on underlying basis for unlawful detainer action (see steps 6-8, below).
- e. Because requirements are technical and easy to violate:
 - (1) *First*, review requirements of CCP §§1161-1161b (see steps 6, 8, below).
 - (2) *Second*, review lease for longer notice provisions and comply with *lease* notice requirement, or you may lose action (but see Schulman v Vera (1980) 108 CA3d 552, 563, 166 CR 620 (compliance with jurisdictional notice was substantial compliance with contractual 5-day notice)).

NOTE

Commercial leases often set forth their own notice requirements. See Eviction Defense Man, chap 19.

- (3) *Third*, if tenancy is subsidized, review lease and regulations and comply with requirements, which may include giving tenant 10-day notice of proposed termination of tenancy, statement and proof of good cause for eviction in notice, special notice service requirements, statement in notice of tenant's rights (*e.g.*, right to present a defense, right to a hearing), and providing a copy of notice(s) and pleadings to a housing agency. See Eviction Defense Man, chap 18.
- (4) *Fourth*, review local rent control ordinances and just-cause eviction ordinances and comply with requirements, *e.g.*, longer notice requirements, statement of grounds for eviction, notification to tenant of rights, and filing notice with rent control board.
- (5) *Fifth*, when serving a nuisance notice, review CCP §1161(4) and 42 USC §1437f(c)(9), which permit the removal from the lease of a tenant who engages in criminal acts of physical violence against cotenants but do not allow eviction of victims of domestic violence.
- (6) *Sixth*, if tenant lives in a mobilehome or a houseboat, review applicable statutes on terminating tenancy, such as CC §§798.55 and 800.70. See Landlord-Tenant, chap 6.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/Satisfying Preliminary Notice Requirements/STEP 6. PREPARE 3-DAY NOTICE, IF APPROPRIATE

STEP 6. PREPARE 3-DAY NOTICE, IF APPROPRIATE

DEFINITION

A 3-day notice:

Residential

Informs tenant *in writing* that he or she has 3 full calendar days after notice is served to pay *exact* amount of rent due as stated in notice, rectify other specified breach of lease, or quit premises. CCP §1161. See Landlord-Tenant, chap 8.

Commercial

Informs tenant *in writing* that he or she has 3 full calendar days after notice is served to pay *exact or estimated* amount of rent due as stated in notice, rectify other specified breach of lease, or quit premises. CCP §§1161, 1161.1. See Eviction Defense Man, chap 19.

Government Subsidized

Usually does not apply to government subsidized residential tenancies. The notice periods for cause vary greatly according to language in the initial lease, the type of subsidy under federal statute and regulations (and whether they defer to or incorporate state law), and the specific reason for the eviction. See Eviction Defense Man, chap 18.

CALCULATION OF 3 DAYS

If 3-day period ends on a weekend or holiday, period is extended to next business day. CCP §§12, 12a, 1161. See Eviction Defense Man §§6.7, 6.26.

CHOOSE CORRECT NOTICE

Advise landlord to use the *correct* 3-day notice:

Pay or Quit

Use 3-day notice to pay or quit when tenant has defaulted on rent obligations. CCP §1161(2). Landlord may demand that tenant pay rent in cash only, as allowed in CC §1947.3. See step 10, below.

Cure or Quit

Use 3-day notice to cure or quit when tenant has breached a covenant or condition other than payment of rent and breach is curable. CCP §1161(3).

Quit

Use 3-day notice to quit when:

- a. Tenant breached a covenant or conditions other than payment of rent and breach is not curable (CCP §1161(3));
- b. Tenant violated a covenant or condition prohibiting (CCP §1161(4)):
 - (1) Assigning;
 - (2) Subletting; or
 - (3) Committing waste;
- c. Tenant committed or permitted a nuisance on the premises or used the premises for an unlawful purpose, including the following:

- (1) Illegal sale of a controlled substance on the premises (CCP §1161(4));
- (2) Unlawful possession or use of illegal weapons or ammunition (CCP §1161(4));
- (3) Commission of act of domestic violence, sexual assault, or stalking against another tenant or subtenant who has vacated the premises (CCP §1161(4)) (remains in effect only until January 1, 2012, unless a statute deletes or extends that date); 42 USC 1437f(c)(9)); or
- d. Purchaser after foreclosure or execution sale seeks to evict former owner of premises or commercial tenant under CCP §1161a. Different rules may apply if lease predates foreclosed mortgage or if new tenancy was created, after sale, with existing tenant. See Aviel v Nq (2008) 161 CA4th 809, 74 CR3d 200; Dover Mobile Estates v Fiber Form Prods., Inc. (1990) 220 CA3d 1494, 1501, 270 CR 183.

IF MONTH-TO-MONTH TENANT

If tenant is month-to-month, try to collect rent due and evict delinquent tenant by:

- a. Serving 3-day notice (see step 7, below);
- b. Waiting 3 days; and then
 - (1) If rent is paid but landlord still wants to evict, serving 30-day or 60-day notice (see step 8, below); or
 - (2) If rent is not paid, proceeding with unlawful detainer on 3-day notice.

Further Research: See Landlord-Tenant, chap 8; Eviction Defense Man §§6.1-6.2, 6.38, 6.46-6.50.

WHAT TO PUT IN NOTICE

Whether you use notice to pay or quit, to cure or quit, or to quit:

- a. Use language that complies with CCP §§1161-1161b;
- b. Add specific language relevant to the kind of notice you choose; and
- c. For *commercial* tenancies (CCP §1161.1):
 - (1) If estimating amount of rent due, identify it as an estimate; and
 - (2) State on notice that acceptance of partial rent payment does not constitute a waiver of any rights, including landlord's right to recover possession of the property.

ALL 3-Day NOTICES

DESCRIBE PREMISES

Sufficiently describe premises so that tenant can identify them, *e.g.*, by referring to street address, apartment number, and other location information.

STATE INTENT TO REPOSSESS

Clearly and unequivocally state landlord's intent to repossess premises. CCP §1161; Landlord-Tenant, chap 8; Eviction Defense Man §6.14.

IF APPROPRIATE, DECLARE INTENT TO FORFEIT

If landlord wants unlawful detainer judgment to declare lease forfeited, clearly indicate intention *and* demand that tenant quit premises. See CCP §1174(a).

NOTE

Better practice is to use the term "forfeiture" rather than "repossession," even though any language showing landlord's intent to

treat the lease as forfeited should be sufficient. See *Neubaus v Norgard* (1934) 140 CA 735, 738, 35 P2d 1039.

When Landlord Declares Forfeiture

When landlord declares forfeiture:

a. Court cannot give tenant "last chance" stay under CCP §1174(c) (allowing tenant to reinstate lease by satisfying unlawful detainer judgment for unpaid rent).

NOTE

Even if the lease or rental agreement is forfeited, tenant may be relieved of forfeiture in case of hardship, and a court may do this on its own motion. CCP §1179.

b. Tenant's obligation for damages (equivalent to rent) extends beyond time that premises are vacated (CC §1951.2).

c. A judgment in unlawful detainer declaring a forfeiture of a lease or rental agreement does not release tenant from future rents due under the lease (CCP §1174.5).

Further Research: See Eviction Defense Man §26.14.

When Landlord Does Not Declare Forfeiture

When landlord does *not* declare forfeiture:

a. Tenant can reinstate lease by satisfying unlawful detainer judgment for unpaid rent within 5 days after entry of judgment (CCP §§1161, 1174(c)); *and*

b. Tenant's obligation for damages (equivalent to rent) extends beyond time premises are vacated. CC §1951.2.

IDENTIFY WHO POSSESSES PREMISES

a. Address notice to *all* tenants, subtenants, and other occupants in possession so that they also can be named later in complaint.

NOTE

Be aware that adult residents claiming to have entered premises *before* unlawful detainer action began will not be evicted under writ of possession unless you name them in the summons, complaint, and judgment. CCP §§1161, 1174.3.

b. If possible that persons unknown to landlord will be in possession, also state that notice is directed to all persons in possession.

LANDLORD'S SIGNATURE

Best practice is to have landlord sign notice personally, although this may not be required. See *Cavanaugh v High* (1960) 182 CA2d 714, 721, 6 CR 525 (notice not personally signed).

CAVEAT

An attorney signing a 3-Day Notice to Pay Rent or Quit directed to a residential tenant may be a "debt" collector under the Fair Debt Collection Practices Act (15 USC §§1692-1692p). See *Romea v Heiberger & Assocs.* (2d Cir 1998) 163 F3d 111; *Silva v Mid-Atlantic Mgmt. Co.* (ED Pa 2003) 277 F Supp 2d 460. Consequently, it may be better to have landlord or property manager, rather than attorney, sign the notice. See Landlord-Tenant §8.26A.

IF NOTICE TO PAY RENT OR QUIT

WHAT TO INCLUDE

If notice to pay rent or quit:

a. Specify that tenant defaulted in payment of rent under the lease agreement.

b. Specify name, phone number, and address of person to whom rent must be paid and, if rent may be paid personally, the usual days and hours that person will be available. If address does not allow for personal delivery (*e.g.*, P.O. box) and tenant mails rent to that address, then rent is deemed paid on date posted if tenant can show proof of mailing. Alternatively, notice may (1) designate financial institution within five miles of rental property for deposit or (2) direct tenant to make electronic funds transfer. See CCP §1161(2).

c. If *residential* lease, ascertain *exact* amount due:

(1) Demand exact amount of rent due and unpaid as of date of notice. CCP §1161(2). Landlord may demand that tenant pay rent in cash only, as allowed in CC §1947.3. See step 10, below.

(2) If lease contains percentage rent clauses (common in farming leases), then state precise method of calculating rent based on information known to tenant. See Valov v Tank (1985) 168 CA3d 867, 871, 214 CR 546.

d. If *commercial* lease, demand *exact* rent due or *reasonably estimated* amount due:

(1) If you demand reasonably estimated amount of rent due and unpaid as of date of notice (CCP §1161.1), include insurance expenses, real property taxes and operating charges, and common area and maintenance charges, if designated as rent in lease.

(2) Be aware that if landlord identifies amount claimed as a reasonable estimate, and it is not more than 20 percent more or less than amount court determines to be due and determines was reasonably estimated, then landlord prevails (*i.e.*, tenant is subject to judgment for possession, actual amount of rent, and other sums found due). CCP §1161.1(a), (e).

NOTE

On tenant's right to pay reasonable estimate, see discussion of *Commercial Tenant Pays or Tenders Reasonable Estimate of Rent Due*, step 33, below.

(3) If commercial lease contains percentage rent clauses, be sure to state precise method of calculating rent based on information known to tenant. See *Valov v Tank, supra*.

(4) In commercial eviction for nonpayment of rent, if landlord accepts partial payment of rent after serving notice and *before* filing complaint, then landlord may, without any further notice to tenant, commence an unlawful detainer action for possession of the premises and pursue the difference between the amount demanded in the notice and payment actually received, and this shall be specified in the complaint. CCP §1161.1(b).

(5) If landlord accepts partial payment of rent *after* filing complaint, landlord can amend the complaint without leave of court to reflect the partial payment. In that event, landlord must provide actual notice to tenant that acceptance of the partial rent payment does not constitute a waiver of any rights including landlord's right to recover possession. CCP §1161.1(c). A statement in the lease and/or notice to pay or quit meets the actual notice requirement.

WHAT NOT TO INCLUDE

To avoid an invalid notice, *do not demand* rent that:

a. Exceeds amount permitted under applicable rent control ordinances;

b. Must be paid in cash unless under circumstances stated in CC §1947.3 (see step 10, below);

c. Is more than 1 year overdue (CCP §1161(2)); but see Levitz Furniture Co. v Wingtip Communications, Inc. (2001) 86 CA4th 1035, 103 CR2d 656 (in commercial tenancy, if rent in notice is stated as being reasonably estimated, then including rent more than 1 year overdue will not automatically invalidate notice));

d. Exceeds amount required by lease or valid rent-increase notice; *or*

e. Is not yet due under lease. See WDT- Winchester v Nilson (1994) 27 CA4th 516, 530, 32 CR2d 511.

Late Charges

Landlord may not be able to recover late charges in unlawful detainer action (see Landlord-Tenant §§4.43A, 8.39-8.40):

a. *Late charges in a residential lease* may be deemed liquidated damages, void under CC §1671.

b. *Be prepared to defend the late charge* as a reasonable, good faith estimate of actual damage suffered by landlord (see Orozco v

- c. *If lease does not designate other payments (such as late charges) as additional rent, then do not include in notice.*
- d. *If commercial lease designates late charges and interest as rent, you may include them in notice but make sure it states that rent is reasonably estimated.*

Attorney Fees

Although landlord may be able to recover attorney fees in unlawful detainer action if rental agreement so provides (see Landlord-Tenant §13.25), demanding attorney fees in 3-day notice will:

- a. Invalidate the notice (see step 5, above); and
- b. Expose the preparer to liability under the Fair Debt Collection Practices Act (15 USC §§1692-1692p) (see *Reichert v National Credit Sys., Inc.* (9th Cir 2008) 531 F3d 1002).

Sample Form: For alternative samples of Notice to Pay Rent or Quit, see App B. See also Landlord-Tenant, chap 8.

CAVEAT

When preparing 3-day notice to pay rent or quit, always review CCP §1161(2) for possible amendments to notice requirements. Also, avoid using preprinted forms entitled simply "Notice to Quit" when alternative demand for payment of rent or giving up possession is required, even if body of notice contains alternative demand. Attention to these details will lower risk of tenant claiming notice is invalid.

IF NOTICE TO CURE OR QUIT

WHAT TO INCLUDE

Notice to cure or quit should:

- a. Specify nature of default; and
- b. State that tenant has right to cure it *or* must quit premises within 3-day notice period (or other period provided in the lease).

Sample Form: For Sample Notice to Perform Covenant or Quit, see App C.

IF NOTICE TO QUIT

WHAT TO INCLUDE

Notice to quit should:

- a. Specify nature of default or grounds for giving notice;
- b. State that default is *not* correctable;
- c. Demand that tenant quit premises within notice period; and
- d. Not offer an alternative.

Sample Form: For Sample Notice to Quit—Breach of Covenant, see App D.

Further Research: See Landlord-Tenant, chap 8; Eviction Defense Man §§6.10-6.24, 6.38-6.40, 6.43-6.45; App E to this Action Guide.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/Satisfying Preliminary Notice Requirements/STEP 7.
SERVE 3-DAY NOTICE

STEP 7. SERVE 3-DAY NOTICE

WHEN TO SERVE

If 3-day notice is based on tenant's default:

- a. Wait to serve 3-day notice until after tenant's breach or default;
- b. Ascertain whether lease or local rent control ordinances delay default by mandating "grace period," *e.g.*, rent is due on 1st but is not late until 5th; and
- c. In determining whether rent is late, calculate due date to include statutory extension to next business day if due date falls on legal holiday or on Saturday or Sunday (CCP §§12-12b, 13).

If notice is given after a sale under CCP §§1161a-1161b, give appropriate notice after title is perfected. See step 2, above.

Further Research: See Landlord-Tenant, chap 8; Eviction Defense Man, chaps 6, 8.

WHOM TO SERVE

Serve all persons landlord intends to evict from premises (CCP §1162):

- a. Include all persons named in lease; but
- b. Exclude anyone named in lease who has assigned all interest in it and is not in possession.

Cotenants or Subtenants

If cotenants or subtenants are in possession:

- a. Be sure that you have identified and named *all* of them in notice (for discussion, see "Identify Who Possesses Premises," step 6, above); and
- b. Serve each cotenant, subtenant, and occupant with a notice. See Briggs v Electronic Memories & Magnetics Co. (1975) 53 CA3d 900, 904, 126 CR 34 (merely providing subtenant with copy of notice directed to and served on tenant not sufficient notice to subtenant). Compare Briggs with Gentry v Citron (1918) 36 CA 288, 171 P 1079 (when tenants are all parties to same lease, service of notice on one tenant is sufficient to bind others).

NOTE

You may still succeed in evicting an unnamed occupant by serving a Prejudgment Claim of Right to Possession on all persons appearing to reside at the premises and by posting a notice, summons, and complaint. See CCP §§415.46, 1174.25. See also step 15, below.

Corporation, Partnership, or Limited Liability Company Tenant

Be sure to name entity and serve properly. See Handling Service of Process (Serving Summons in Civil Proceedings) (Cal CEB Action Guide November 2006), referred to throughout this Action Guide as Service of Process. See also Landlord-Tenant, chaps 8-9.

WHO SERVES

Landlord or someone who will be available to testify at trial should serve.

HOW TO SERVE

Have server follow applicable CCP §1162 method *plus* any additional requirements in:

- a. Lease provisions in a commercial lease;
- b. Rent control ordinances; and
- c. Subsidized lease or applicable regulations (*e.g.*, sending copy of notice to housing authority).

Personal Service

Server personally serves tenant under CCP §1162(1); *or*

Substituted Service

If defendant is absent from residence *and business*, server may leave notice with a suitable person, *e.g.*, an office manager, and mail notice to residence (CCP §1162(2)); *or*

Post and Mail

a. Server uses CCP §1162(3) if:

- (1) Tenant's place of business or residence cannot be determined; *or*
- (2) A person of suitable age or discretion (*i.e.*, having judgment to give papers to addressee) cannot be found at either location.

b. Server *must* ensure proper service by (CCP §1162(3)):

- (1) Affixing a copy in a conspicuous place on the property;
- (2) Delivering a copy to a person residing there, if that person can be found;
- (3) Mailing a copy addressed to tenant at the property address; and
- (4) Although not statutorily required, putting a copy under the door of the premises and telephoning tenant the next day, asking whether notice was received and, if not, serving it again by any method possible under CCP §1162.

NOTE

At least one authority has stated that the 5-day extension for service by mail granted by CCP §1013 does not apply to notices served under CCP §1162. See *Losornio v Motta* (1998) 67 CA4th 110, 115, 78 CR2d 799. See also discussion of *Losornio* in Landlord-Tenant §§8.29, 8.65, 8.77, 9.44.

PROVE SERVICE

Prepare and have server execute proof of service of notice because it must be attached as exhibit to unlawful detainer complaint. See CCP §1166(a)(5).

Further Research: See Service of Process, steps 9-36; Landlord-Tenant, chap 8; Eviction Defense Man §6.29; chap 8.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/Satisfying Preliminary Notice Requirements/STEP 8. USE 30-DAY, 60-DAY, OR 90-DAY NOTICE, IF APPROPRIATE

STEP 8. USE 30-DAY, 60-DAY, OR 90-DAY NOTICE, IF APPROPRIATE

DEFINED

A 30-day or 60-day notice informs tenant in writing that a periodic tenancy (usually month-to-month) terminates at the end of the notice period. CC §§1946-1946.1. Owner must serve tenant with a 90-day notice when owner terminates for no cause (or declines to renew) a contract with a governmental agency that provides for rent limitations to qualified tenant. CC §1954.535. See Landlord-Tenant §§8.69-8.70.

NOTE

If appropriate, review local rent control ordinances or HUD lease and regulations to see whether landlord must have "cause" to terminate tenancy. See Landlord-Tenant, chap 7; Eviction Defense Man, chaps 5, 16-18. Review special notice and other procedures under the Ellis Act (Govt C §§7060-7060.7) if landlord is taking residential units off market, *i.e.*, going out of business (see Landlord-Tenant, chap 7; on defending Ellis evictions, see Eviction Defense Man, chap 17).

WHEN 30-DAY NOTICE USED

Landlord uses a 30-day notice to:

- a. Terminate month-to-month nonresidential tenancy (under CC §1946) *unless* lease or rental agreement specifies longer or shorter (not less than 7 days) notice period.
- b. Terminate month-to-month residential tenancy (under CC §1946.1) if tenant has been resident for less than 1 year.
- c. Terminate government subsidized residential tenancy if notice states specific reasons for termination (under federal regulations and applicable state law; see Eviction Defense Man §18.22).
- d. Evict month-to-month tenant occupying *residential* premises sold under voluntary, foreclosure, or execution sale under CCP §1161a(c)-(d). (But temporarily, a 60-day notice is required under CCP §1161b following certain foreclosure sales; see step 2, above.)
- e. Terminate tenancy at will (CC §789).
- f. Terminate residential tenancy of over 1 year when property is being sold under the following circumstances (CC §1946.1(d)):
 - (1) Owner is selling a dwelling or unit that is alienable separate from the title to any other dwelling unit;
 - (2) Owner is selling to a bona fide purchaser for value;
 - (3) Escrow has been established with a licensed real estate agent or licensed real estate broker;
 - (4) Purchaser is a natural person or persons;
 - (5) Notice is given within 120 days after escrow is opened; and
 - (6) Purchaser in good faith intends to reside in the property for at least 1 full year after the termination of the tenancy.
- g. Terminate tenant in possession of rental housing that has been sold under situations listed in CCP §1161a(b) (see CCP §§1161a(c), 1161b).

NOTE

If occupant is the previous owner or a commercial tenant, only a 3-day notice is required after foreclosure, voluntary sale, or execution sale. CCP §1161a(b). However, an unlawful detainer action under §1161a(b) will lie only if property title has been duly perfected in the purchaser. See Eviction Defense Man §20.4.

WHEN 60-DAY NOTICE USED

Landlord uses a 60-day notice to:

- a. Terminate month-to-month residential tenancy (under CC §1946.1) if tenant has been resident for 1 year or longer *unless* local rent control ordinance specifies longer notice period.
- b. Terminate residential tenancy under mobilehome park agreement (see Landlord-Tenant, chap 6) or subsidized housing agreement if notice states specific reasons for termination under applicable federal and state law (see Eviction Defense Man §18.22).
- c. Terminate tenancy of tenant in possession of rental housing unit after foreclosure (under CCP §1161b, which remains in effect only until January 1, 2013, unless a statute deletes or extends that date).

NOTE

If tenants are in possession of the premises under a lease predating the loan that was foreclosed on, the lease will remain in effect after the foreclosure. In that case, the lease may not be terminated by a 60-day notice. See Aviel v Ng (2008) 161 CA4th 809, 74 CR3d 200. Different rules may apply if new tenancy was created, after the sale, with existing tenant. See Dover Mobile Estates v Fiber Form Prods., Inc. (1990) 220 CA3d 1494, 1501, 270 CR 183.

WHEN 90-DAY NOTICE USED

Owner is required to serve tenant with a 90-day notice when owner terminates for no cause or fails to renew a contract with a governmental agency that provides for rent limitations to qualified tenant. CC §1954.535. See Wasatch Prop. Mgmt. v Degrate (2005) 35 C4th 1111, 29 CR3d 262.

For example, after the first year of tenancy, Section 8 tenants are entitled to a 90-day notice before eviction without cause. Arguably, the 90-day notice requirement does not apply when the notice states good cause or tenant has breached the terms of the rental agreement, regardless of whether the unit is subject to rent control.

WHAT TO INCLUDE

Description

Describe premises sufficiently so that tenant can identify them, *e.g.*, by referring to street address or other location information.

Demand Premises

Clearly and unequivocally state landlord's intention to repossess premises.

State Time Tenancy Terminates

- a. State that the tenancy terminates 30, 60, or 90 days after notice is served.
- b. You may specify a date of termination beyond 30, 60, or 90 days if, *e.g.*, you anticipate a delay in tenant's receipt of notice.

Reasons for Termination

You may include reasons for termination, even though generally not required by law:

- a. If landlord anticipates retaliatory eviction defense, then state grounds for terminating lease (for discussion of this affirmative defense, see "Retaliatory Eviction," step 25, below); or
- b. If required by local rent control ordinance or HUD, state good cause for termination.

Notice of Right to Pretermination Inspection

You may include notice of right to pretermination inspection (CC §1950.5(f); see step 9, below) in 30-day, 60-day, or 90-day notice of termination of residential tenancy, or send it separately, as long as inspection notice is given within a reasonable time after termination notice. This does not apply to commercial tenancies (regardless of notice period) or to residential tenancies terminated by a 3-day notice (*i.e.*, on tenant's default) under CCP §1161(2)-(4). See Landlord-Tenant §§4.28, 8.167-8.175. On refunding security deposit, see step 41, below.

LANDLORD'S SIGNATURE

Have owner or authorized agent personally sign notice. Attorneys should avoid signing 3-day notices. See Fair Debt Collection Practices Act (15 USC §§1692-1692p), step 6, above.

NOTE

Although signing the notice is not required by CC §1946, this may avoid court invalidation on the ground that landlord did not strictly adhere to notice requirements.

Sample Form: For Sample 30-Day/60-Day Notice to Terminate Tenancy, see App E; Landlord-Tenant, chap 8; Eviction Defense Man §§7.16-7.19.

WHOM TO SERVE

- a. See "Whom to Serve," step 7, above.
- b. Subtenants need not be served with 30-day or 60-day notice to terminate month-to-month tenancy, but better practice is to serve them anyway. CCP §1161. See Four Seas Inv. Corp. v International Hotel Tenants' Ass'n (1978) 81 CA3d 604, 611, 146 CR 531.

HOW TO SERVE

- a. See "How to Serve," step 7, above; *or*
- b. Although personal service is preferable, you may also use certified or registered mail with return receipt requested. CC §§1946, 1946.1(e).

PROVE SERVICE

Prepare and have process server execute proof of service because it must be attached as exhibit to unlawful detainer complaint. See CCP §1166(a)(5).

Further Research: See Landlord-Tenant, chap 8; Eviction Defense Man, chaps 6-7.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/Satisfying Preliminary Notice Requirements/STEP 9.
DO NOT GIVE ANY NOTICE IF NOT REQUIRED OR APPROPRIATE

STEP 9. DO NOT GIVE ANY NOTICE IF NOT REQUIRED OR APPROPRIATE

AFTER NOTICE EXPIRES

In most situations, another notice will not be required after a notice of termination expires, and you may proceed with the unlawful detainer action.

Landlord Gave Notice

Do not give another notice if:

- a. Landlord gave tenant a 30-day notice ([CC §1946](#)), a 60-day notice ([CC §1946.1](#)), or a 90-day notice ([CC §1954.535](#)), but tenant holds over; *and*
- b. Landlord has not accepted any rent for the period after the notice period expired.

NOTE

Be sure that landlord has not accepted a portion of the rent; otherwise, parties may have created a month-to-month tenancy, requiring a new notice for termination. See [step 8](#), above.

Tenant Gave Notice

Do not give another notice if tenant gave notice but holds over after notice period expires. [CCP §1161\(5\)](#).

FIXED-TERM LEASE EXPIRES

Notice of termination after a fixed-term commercial or residential lease expires is normally not required when landlord has not accepted any monthly rent after expiration. [CCP §1161\(1\)](#). But if the lease requires notice of nonrenewal or includes a provision that automatically creates a month-to-month tenancy after the fixed-term lease expires, then a 30-day or 60-day notice would be required. See [step 8](#), above.

CAVEAT

Local rent control or just-cause eviction ordinances may require notice and proof of just cause for nonrenewal of fixed-term lease or eviction after fixed-term lease expires. See [Landlord-Tenant, chap 7](#).

Give Notice of Right to Pretermination Inspection

For express purpose of identifying damage caused by residential tenant and giving tenant an opportunity to repair it, landlord must give notice of right to pretermination inspection (see [CC §1950.5\(f\)](#)) within reasonable time before fixed-term residential lease expires. See [Landlord-Tenant §§4.28, 8.167-8.175](#). See also security deposit refund procedures, [step 41](#), below.

MANAGER FIRED

Do not give notice to manager who stays beyond the date employment terminates ([CCP §1161\(1\)](#)), unless rent control ordinance or contract with manager specifies otherwise.

Further Research: See [Landlord-Tenant, chap 8](#); [Eviction Defense Man §§7.3-7.5](#).

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/Before Filing Complaint/STEP 10. DETERMINE WHETHER LANDLORD CAN FILE COMPLAINT AND WHEN TO FILE IT

Before Filing Complaint

STEP 10. DETERMINE WHETHER LANDLORD CAN FILE COMPLAINT AND WHEN TO FILE IT

EVALUATE WHETHER TO PROCEED

Determine whether landlord can or should pursue unlawful detainer action.

TENANT'S ACTIONS

WHAT TENANT DOES

Tenant may make an unlawful detainer action unnecessary or impossible if, during the 3-day notice period, tenant:

Cures Breach

Cures any rectifiable breaches and remains in possession (if tenant cures breach, landlord cannot file unlawful detainer complaint); or

Quits Premises

Quits the premises (landlord may repossess premises without filing an unlawful detainer action).

NOTE

Landlord may not demand that tenant pay rent in cash unless tenant has previously attempted to pay landlord with check drawn on insufficient funds or tenant has instructed drawee to stop payment on a check, draft, or money order. Even then, landlord may only demand cash payment for no more than 3 months. [CC §1947.3](#). If landlord is uncertain whether tenant has quit premises, landlord should serve Notice of Belief of Abandonment. See [step 1](#), above.

LANDLORD'S ACTIONS

WHAT LANDLORD DOES

Landlord's actions following service of notice affect right to proceed with unlawful detainer action.

Accepts Partial Rent Payment From Residential Tenant

If basis of notice is failure to pay rent due and landlord accepts tender of partial payment of rent due in a residential tenancy, landlord:

- a. Has waived right to proceed on that notice; and
- b. Must serve tenant with a new 3-day notice based on default in payment of remaining amount due.

Accepts Partial Rent Payment From Commercial Tenant

If basis of notice is failure to pay rent due and landlord accepts tender of partial payment of rent due in a commercial tenancy ([CCP §1161.1\(b\)-\(c\)](#)):

- a. *Before* unlawful detainer complaint is filed, landlord:

- (1) May commence and pursue unlawful detainer action to recover difference between amount demanded and payment actually

received;

(2) Need not give further notice; and

(3) Must specify in the complaint that landlord is seeking recovery of difference between amount demanded and payment received.

b. *After* unlawful detainer complaint is filed, landlord:

(1) Does not waive any rights or defenses by accepting a partial payment; *and*

(2) Is entitled to amend the complaint to reflect the partial payment without prior leave of court and without delaying proceedings; *but*

(3) Must have given prior notice to tenant that acceptance of partial rent payment does not constitute waiver of any rights. Such notice may be given in the lease (see Woodman Partners v Sofa U Love (2001) 94 CA4th 766, 114 CR2d 566) or in the 3-day notice (see "What to Put in Notice," step 6, above).

Refuses Partial Rent Payment

a. In *all tenancies*, landlord can refuse tender of partial payment of rent due (different from amount specified in notice) and proceed with unlawful detainer action.

b. In *commercial tenancy*, if notice to pay rent is served and landlord:

(1) Did not declare a forfeiture, landlord should always take a partial payment;

(2) Declared a forfeiture, landlord's acceptance of rent after notice period runs may defeat forfeiture.

Accepts Full Rent Payment

a. If basis of notice is to pay rent or quit, landlord waives right to proceed on that notice.

b. If basis of notice is other than failure to pay rent due, landlord almost assuredly waives right to proceed on that notice; *however*:

(1) If default is *continuing* (e.g., failure to provide requisite insurance), then landlord's waiver of one breach does *not* constitute waiver of future breaches, and landlord may serve a new notice to cure breach of covenant or to quit premises;

(2) If default is *noncontinuing* (e.g., assignment contrary to agreement or commission of waste), landlord's acceptance of rent forever waives that breach (but see CCP §1161.1(b)-(c) (argument could be made that acceptance of rent in commercial context is not a waiver of rights to regain possession)).

c. *Beyond 30 days*, if landlord serves 30-day notice, landlord's actions accepting rent for period beyond 30 days may constitute withdrawal of notice. Highland Plastics, Inc. v Enders (1980) 109 CA3d Supp 1, 11, 167 CR 353.

Compromises With Tenant

If landlord negotiates with tenant, landlord's actions may estop action or waive the breach.

Further Research: On waiver as affirmative defense, see step 25, below.

ACTION BY CITY ATTORNEY OR PROSECUTOR

An unlawful detainer action may be brought by the city attorney or prosecutor under a pilot program in specified cities in Los Angeles, San Diego, Sacramento, and Alameda counties on the basis of a tenant's illegal conduct involving unlawful weapons or ammunition. Owner may be joined as a defendant if owner does not cooperate with prosecutor by evicting nuisance tenants. See CC §3485, which remains in effect only until January 1, 2010, unless a statute deletes or extends that date.

IF DECIDING TO PROCEED

IF NOTICE REQUIRED

If notice is required, wait until expiration of 3-day, 30-day, 60-day, or 90-day notice period, and then file complaint.

a. Compute notice time by "excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded." CCP §12. On how weekends and holidays extend the time to perform under a 3-day notice, see Lamanna v Vognar (1993) 17 CA4th Supp 4, 22 CR2d 501. For discussion of effects of holidays on notice periods, including list of legal holidays, see Eviction Defense Man §§6.7, 6.25-6.26.

b. If landlord served notice by mail (CCP §1162(3)), courts are split on when 3-day period begins (see Landlord-Tenant §§8.29, 8.65, 8.77, 9.44), *i.e.*:

(1) 3-day period may not begin *until tenant receives notice* (Davidson v Quinn (1982) 138 CA3d Supp 9, 10 n2, 188 CR 421); or

(2) 3-day notice is effective from date notice is mailed, not from date tenants are actually served (Walters v Meyers (1990) 226 CA3d Supp 15, 20, 277 CR 316; see Losornio v Motta (1998) 67 CA4th 110, 115, 78 CR2d 799 (5-day extension under CCP §1013 does not apply to notices served by mail and mail under CCP §1162)).

c. If you are unsure of date of service, telephone tenant to verify when tenant received notice, and count notice period from date of receipt. See Valov v Tank (1985) 168 CA3d 867, 874, 214 CR 546.

IF NOTICE NOT REQUIRED

File complaint as soon as tenant's unlawful detainer begins.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/Before Filing Complaint/STEP 11. REVIEW RULES FOR PLEADING AND FILING ACTION

STEP 11. REVIEW RULES FOR PLEADING AND FILING ACTION

LOCAL RENT CONTROL OR JUST-CAUSE EVICTION ORDINANCE

Check local rent control or just-cause eviction ordinance to learn whether it has any special pleading requirements.

SUBJECT MATTER JURISDICTION

Superior Court

The Superior Court has original jurisdiction over all cases in unlawful detainer. Cal Const art VI, §10. However, unlawful detainer proceedings in which the entire amount of damages claimed, including statutory damages, is \$25,000 or less are limited civil cases (CCP §86(a)(4)) and must be designated as such in the caption of the complaint (CCP §422.30(b)).

Small Claims Court

Small claims courts do not have jurisdiction over evictions. See CCP §116.220(a)(3), which no longer covers writs of possession in unlawful detainer actions, as amended by Stats 1992, ch 8, §4.

PROPER VENUE AND COURT LOCATION

Generally, the county in which all or part of the leased premises are located is the proper venue. CCP §392(a). Further, the proper court location for trial (*i.e.*, branch or district office of the superior court) is the courthouse where the court tries unlawful detainer actions and that is nearest or most accessible to the premises. CCP §392(b). Many courts are requiring limited civil cases in unlawful detainer to be filed and tried in the branch or district of the superior court where the action should have been filed absent unification. Check local court rules and policies before filing in these counties.

NOTE

If a commercial lease provides for venue in a county other than the county in which the property is located, the venue provision may be enforceable.

CHECK PRIORITY WITH COURT

a. Although courts give priority to unlawful detainer actions over other civil actions (CCP §1179a), be aware that:

(1) Criminal cases have scheduling preference (CCP §1170.5(i)); and

(2) Under "fast track," superior courts may not give unlawful detainer actions preference. For example, it has been the authors' experience that some courts in Los Angeles and Orange counties ignore CCP §1179a.

Further Research: For discussion of fast-track litigation, see California Civil Procedure Before Trial (4th ed Cal CEB 2004), referred to throughout this Action Guide as Civ Proc Before Trial.

b. If you have a choice, file in the court that has the least congested calendar and fewest criminal matters.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/Before Filing Complaint/STEP 12. PREPARE COMPLAINT

STEP 12. PREPARE COMPLAINT

CHOOSE FORM

- a. Prepare your own form (see [App G](#) for sample Complaint for Unlawful Detainer (Attorney Drafted)); or
- b. If the action is not based on a 3-day or 30-day notice following a sale of the rented property (see [step 8](#), above), consider using Complaint—Unlawful Detainer (Judicial Council Form UD-100), reprinted in [App F](#), and California Judicial Council Forms Manual (Cal CEB 1981), referred to throughout this Action Guide as Judicial Council Forms Man.

NOTE

Review statutes governing basis for and pleading in unlawful detainer complaint (see, *e.g.*, [CCP §§396a\(a\)](#), [1161-1161.1](#), [1164](#), [1166](#)).

WHAT YOU ALLEGE

CAPACITY TO SUE

- a. Allege landlord's legal capacity to sue, *e.g.*, as an individual or partnership.
- b. Be aware that a complaint omitting this allegation is vulnerable to tenant's demurrer. [CCP §430.10\(b\)](#).

REQUISITE RELATIONSHIP

Allege that plaintiff and defendant have the requisite relationship, *e.g.*, landlord-tenant.

AGREEMENT EXISTS

Allege:

- a. Existence of lease or rental agreement; and
- b. Whether lease is written or oral:
 - (1) If *oral lease*, specifically describe it;
 - (2) If *written lease*, attach it (see [CCP §1166\(c\)\(1\)](#)), label it as an exhibit, and incorporate it by reference into complaint.

NOTE

If complaint fails to allege whether lease is written or oral, it is vulnerable to tenant's demurrer. [CCP §430.10\(g\)](#).

PROPER VENUE AND COURT LOCATION

Allege facts showing that unlawful detainer action has begun in the proper superior court and the proper court location for trial of the action. See [CCP §396a\(a\)](#), under which these facts must be alleged in either the complaint or a separately filed affidavit, verified by either landlord or its attorney. For further discussion, see "Proper Venue and Court Location," [step 11](#), above.

DESCRIBE PREMISES

Sufficiently describe premises (*e.g.*, street address, apartment number) so that sheriff or Marshal can execute judgment by serving writ of possession and physically evicting tenant.

FACTS SUPPORTING TERMINATION

For all of the following circumstances, include facts showing how and why tenancy was terminated, by alleging:

Failure to Pay Rent (CCP §1161(2))

- a. That tenant defaulted;
- b. Amount of rent for which tenant is in default;
- c. That landlord served written notice on tenant after rental due date;
- d. That written notice:
 - (1) Stated either exact amount of rent due or (for commercial tenancies only) that amount was an estimate; and
 - (2) Demanded payment or that tenant quit premises within 3 days (attach and label notice as an exhibit (see CCP §1166(c)), incorporating it by reference in complaint (see step 6, above));
- e. That tenant failed to comply with notice; *and*
- f. If a commercial tenancy and tenant made a partial payment, difference between amount demanded and amount received has not been paid by tenant.

NOTE

Accurately refer to notice in complaint. Tenant may demur for uncertainty if attached notice and complaint are inconsistent. CCP §430.10(f).

Breach of Non-Rent-Related Covenant (CCP §1161(3))

- a. That covenant was allegedly breached;
- b. That tenant breached it;
- c. If breach was curable, that notice was given demanding that tenant either cure breach or quit premises within 3 days (see step 6, above); or
- d. If breach was not curable, that notice was given demanding that tenant quit premises; *and*
- e. That tenant failed to comply with notice.

Breach of Covenant Against Assigning, Subletting, or Committing Waste (CCP §1161(4))

- a. That covenant was allegedly breached;
- b. That tenant breached it;
- c. That notice was given demanding that tenant quit premises within 3 days; *and*
- d. That tenant failed to comply with notice.

Maintenance of Nuisance or Illegal Use (CCP §1161(4))

- a. That there was maintenance of nuisance or illegal use;
- b. Description of factual basis of nuisance or illegal use;
- c. That notice was given demanding that tenant quit premises within 3 days; *and*
- d. That tenant failed to comply with notice.

Expiration of Fixed-Term Lease (CCP §§1161(1), 1166)

That term has expired.

Property Sale Under CCP §§1161a-1161b

a. Circumstances under which landlord acquired title (see, e.g., Cheney v Trauzettel (1937) 9 C2d 158, 69 P2d 832 (in eviction after foreclosure, plaintiff must prove its purchase at foreclosure sale that complied with statutory law and deed of trust); Evans v Superior Court (1977) 67 CA3d 162, 170, 136 CR 596); and

b. That 3-day, 30-day, or 60-day notice was given (as appropriate) (see steps 2, 6-8, above; Landlord-Tenant §§8.68A-8.68E).

Termination of Month-to-Month or Subsidized Tenancy by Landlord (CC §§1946, 1946.1, 1954.535; CCP §1161(5))

a. That landlord served written notice on tenant:

(1) Declaring tenancy terminated in 30, 60, or 90 days (or less, if permitted by commercial lease or rental agreement); *and*

(2) Requiring tenant to surrender possession of premises on expiration of notice period; *and*

b. That 30, 60, or 90 days (or lesser period) has passed since notice was served, and tenant remains in possession.

Termination of Tenancy at Will (CC §789)

a. That occupant entered the premises with no express provision for the payment of rent and no specified term;

b. That landlord served a 30-day notice to terminate tenancy at will, requiring tenant to surrender possession of the premises on expiration of the notice period; and

c. That 30 days has passed since notice was served, and tenant remains in possession.

Termination of Employment (e.g., Manager Fired) (CCP §1161(1))

a. That occupant entered the premises as a condition of employment;

b. That employment terminated as of a certain date; and

c. That, after that certain date, former employee remains in possession of the premises without permission of landlord.

Termination of Month-to-Month Tenancy by Tenant (CC §§1946, 1946.1(a), (e); CCP §1161(5))

That tenant gave notice and failed to move out.

METHOD OF SERVICE OF NOTICE

Allege method of service of termination notice(s) on which complaint is based. This may be accomplished by completing all items relating to service of the notice in Complaint—Unlawful Detainer (Judicial Council Form UD-100) (reprinted in App F) or by attaching a proof of service of the notice(s). CCP §1166(a)(5). Form UD-100 may not be used in evictions after sale or foreclosure under CCP §§1161a-1161b.

TENANT IN POSSESSION

Allege:

a. That tenant remains in possession of premises;

b. That possession is without landlord's permission or consent; and

c. That landlord is entitled to immediate possession of premises.

BACK RENT DUE

a. Allege back rent due *only* if the unlawful detainer action is based on 3-day notice to pay rent or quit under CCP §1161(2). CCP §1174(b); Castle Park No. 5 v Katherine (1979) 91 CA3d Supp 6, 10, 154 CR 498; Saberi v Bakhtiari (1985) 169 CA3d 509, 513, 215 CR 359.

b. Properly allege back rent stated in notice to pay rent or quit. CCP §1174. See Landlord-Tenant §9.38.

c. If a commercial tenancy and tenant has made partial payment, state that amount due is the difference between amount demanded in 3-day notice and amount received in partial payment after serving notice. CCP §1161.1(b)-(c).

DAMAGES

Allege damages after notice period or lease expires based on daily "reasonable rental value" of premises, from the time notice expired until judgment is entered. See Cavanaugh v High (1960) 182 CA2d 714, 6 CR 525; Superior Motels, Inc. v Rinn Motor Hotels, Inc. (1987) 195 CA3d 1032, 1066, 241 CR 487.

INTEREST

If unlawful detainer is based on nonpayment of rent, allege right to prejudgment interest on rent and ascertainable damages at (CC §3287):

- a. Rate set forth in agreement, if not usurious; or
- b. 10 percent. Cal Const art XV, §1.

STATUTORY DAMAGES

If seeking statutory damages under CCP §1174(b) (limited to \$600), then allege facts (not conclusions) showing tenant's malice in holding over, as in the following examples:

- a. Tenant prevented new tenant from entering premises by installing locks and posting guards (Erbe Corp. v W e³ B Realty Co. (1967) 255 CA2d 773, 780, 63 CR 462); and
- b. Knowing landlord did not have obligation to extend lease, tenant withheld possession. Sasson v Katash (1983) 146 CA3d 119, 126, 194 CR 46.

NOTE

Be prepared for tenant's motion to strike *and* court's ruling in tenant's favor.

ATTORNEY FEES

If written lease provides for attorney fees, allege your right to recover them. CC §1717.

WHAT YOU PRAY FOR

FORFEITURE

If landlord has elected to declare forfeiture of the lease in the notice, pray for that forfeiture. See "If Appropriate, Declare Intent to Forfeit," step 6, above.

RESTITUTION

Request restitution of premises.

BACK RENT

If back rent is alleged to be due, include in prayer.

DAMAGES

Request reasonable rental value at daily rate from date of unlawful detention.

INTEREST

If alleged interest is due, include in prayer.

ATTORNEY FEES

If written lease or rental agreement contained provision for attorney fees, include in prayer.

COSTS

Claim allowable costs.

VERIFICATION

MANDATORY

Include plaintiff's mandatory verification, with the name of the person signing the verification typed or printed (CCP §1166(a)(1)), to avoid motion to strike (CCP §436).

Sample Forms: See Complaint—Unlawful Detainer (Judicial Council Form UD-100) (for individual plaintiff), reprinted in App F and in Judicial Council Forms Man. For sample verifications for other persons who may verify, see Civ Proc Before Trial §§15.14-15.21.

ATTACHMENTS TO complaint

MANDATORY EXHIBITS

a. In unlawful detainer actions for residential tenancies, you must attach to complaint copies of:

(1) Lease, unless it is not in possession of landlord or agent or employee (CCP §1166(c)(1)(B)(ii)) or the unlawful detainer action is based solely on CCP §1161(2) (CCP §1166(c)(1)(B)(iii)); *and*

(2) Termination notice or notices served (on which complaint is based), and either attach proof of service or allege exact method of service of each notice (CCP §1166(a)(5), (c)(1)).

b. If copies of these documents are not attached to complaint, it is vulnerable to tenant's demurrer. CCP §430.10(e)-(g). But if the defect can be cured, the court "shall" grant a 5-day period to amend by attaching required documents. CCP §1166(c)(2).

Review complaint BEFORE FILING

REVIEW FOR DEFECTS

Before filing complaint, review it for defects.

Further Research: See Landlord-Tenant §10.77 (Checklist: Common Defects in Unlawful Detainer Complaints); Eviction Defense Man §§6.51, 7.24, 13.3-13.4.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/Before Filing Complaint/STEP 13. IF COMMERCIAL TENANCY, CONSIDER FILING WRIT OF ATTACHMENT WITH COMPLAINT

STEP 13. IF COMMERCIAL TENANCY, CONSIDER FILING WRIT OF ATTACHMENT WITH COMPLAINT

WHEN AUTHORIZED

A writ of attachment is authorized in an action or claim for money based on an express or implied commercial contract when:

a. Total amount claimed is:

- (1) Greater than \$500; *and*
- (2) Fixed or readily ascertainable; *and*

b. Landlord has established probable validity of claim and claim is unsecured (except for security deposit). CCP §§483.010-490.060. See Obtaining a Writ of Attachment (Cal CEB Action Guide December 2006), referred to throughout this Action Guide as Writ of Attachment.

WHEN APPROPRIATE

A writ of attachment is appropriate if:

- a. You expect that the unlawful detainer action will not be heard within the required 20 days (CCP §1170.5);
- b. A substantial amount of rent is involved and you anticipate tenant might hide assets, squander them, or otherwise deprive you of recovery, in which case seek ex parte writ of attachment or protective order (see CCP §§485.010-485.540); or
- c. A substantial amount of rent is involved, in which case securing a writ may encourage settlement.

AMOUNT TO ATTACH

a. Seek to attach an amount equal to the sum of:

- (1) Rent due and unpaid as of date you file complaint in unlawful detainer action (CCP §483.020(a)(1)); *and*
- (2) Rent for period from date you filed complaint until estimated date of judgment (or earlier estimated date of delivery of possession to landlord) (compute amount at rate provided in lease (CCP §483.020(c))); *and*
- (3) Estimated costs, prejudgment interest, and attorney fees to be incurred (if allowed under lease or rental agreement).

b. Do not reduce amount you want to attach by payments and deposits from tenant if they secure payment of rent *and* other lease obligations, *e.g.*, cleaning and painting. If the deposit secures only payment of rent, then subtract it. CCP §483.020(e).

Further Research: See CCP §§484.010-484.110; Writ of Attachment.

WHEN WRIT HEARD

Writ application is heard generally 16 court days after noticed application is filed and served (CCP §§484.040, 1005, 1013), plus:

- a. 2 calendar days if served by fax (with written agreement and confirmation), express mail, or overnight delivery service;
- b. 5 calendar days if served by mail when place of mailing and address are in California;
- c. 10 calendar days if place of mailing or address is outside California; or
- d. 20 calendar days if place of mailing or address is outside the United States.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/When Filing Complaint/STEP 14. FILE COMPLAINT, HAVE 5-DAY SUMMONS ISSUED, AND SERVE COPY OF COMPLAINT AND SUMMONS

When Filing Complaint

STEP 14. FILE COMPLAINT, HAVE 5-DAY SUMMONS ISSUED, AND SERVE COPY OF COMPLAINT AND SUMMONS

FILE COMPLAINT

File complaint and obtain sufficient number of file-stamped copies.

HAVE SUMMONS ISSUED

Have court clerk issue *5-day* summons. CCP §§1166(d), 1167.

HOW TO SERVE

Serve summons in same manner as other civil actions.

NOTE

If serving a prejudgment claim of right to possession with the summons and complaint, comply with additional procedures. See step 15, below.

Personal Service

Use personal service for natural persons, under CCP §415.10.

Substituted Service on Natural Persons

Under CCP §415.20(b):

- a. You may use substituted service only if defendant cannot be personally served "with reasonable diligence;"
- b. Service is not deemed complete until 10 days after mailing date;
- c. You must mail promptly after personal delivery to competent member of household (or person apparently in charge), at least 18 years of age, at defendant's dwelling, office, usual place of abode, usual place of business (including customary place of employment), or usual mailing address other than a P.O. box; and
- d. You must inform that person of content of item served.

Serving Business Entity

If defendant is a corporation (or other business entity), serve entity or its agent for service of process, under CCP §§415.95, 416.10-416.50.

Substituted Service on Business Entity

Under CCP §415.20(a):

- a. Reasonable diligence to personally serve is not a prerequisite;
- b. Service is not deemed complete until 10 days after mailing date;
- c. You must mail promptly after personal delivery during usual office hours to person apparently in charge of defendant's office or person at least 18 years of age at defendant's usual mailing address other than a P.O. box; and
- d. You must inform that person of content of item served.

Post and Mail

a. Serve any party defendant by post and mail, available under CCP §415.45 if landlord cannot, after exercising "reasonable diligence," serve defendant by other methods.

NOTE

Most courts require at least 3 personal service attempts before accepting post and mail service.

b. Apply to court for permission to post summons on premises; then mail copy of summons and complaint by *certified* mail to defendant's last known address.

c. Better practice is to post *both* summons *and* complaint to avoid tenant's denial of due process claim.

d. Service is complete 10 days after posting *and* mailing.

e. Response is due 15 days after posting *and* mailing.

Certified Mail

a. Serve by certified mail, available under CCP §415.47, if:

(1) Landlord has already served Notice of Belief of Abandonment;

(2) Landlord has received tenant's response stating intent not to abandon premises; *and*

(3) Within 60 days after date landlord received tenant's notice of intent not to abandon, landlord serves copy of summons and complaint by certified mail with postage prepaid and addressed to tenant at address stated in tenant's responding notice.

b. Service deemed complete 10 days after mailing of summons and complaint.

c. Response due 15 days after mailing.

Further Research: On filing and serving complaint, see Landlord-Tenant, chap 9; Service of Process, step 9; Eviction Defense Man, chaps 8, 12.

WHO SERVES

Anyone at least 18 years of age and not a party to the action may serve. CCP §414.10.

If Serving Prejudgment Claim of Right to Possession

If you are serving a prejudgment claim of right to possession with the complaint (see step 15, below), service must be made by a Marshal, sheriff, or registered process server. CCP §415.46(b).

OBTAIN PROOF OF SERVICE

Request that process server provide you with a properly completed and executed declaration of service immediately after service is accomplished, using Proof of Service of Summons (Judicial Council Form POS-010).

WHEN DEFENDANT MUST RESPOND

Except when complaint is served by substituted service or by posting and mailing (see "How to Serve," this step, above), defendants must file and serve answer or other responsive pleading within 5 days after service of summons and complaint. See step 25, below.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/When Filing Complaint/STEP 15. PREPARE AND SERVE PREJUDGMENT CLAIM OF RIGHT TO POSSESSION, IF APPROPRIATE

STEP 15. PREPARE AND SERVE PREJUDGMENT CLAIM OF RIGHT TO POSSESSION, IF APPROPRIATE

WHEN TO USE

Prepare and serve a prejudgment claim of right to possession if you suspect that someone may claim a right to possession (and you have not named that person on the termination notice and summons and complaint) because he or she is (CCP §415.46(a)):

- a. Living with the named tenant as a roommate and paying rent; or
- b. An occupant claiming to have occupied the premises at the time the action was filed.

EFFECT

Proper service of prejudgment claim with complaint requires all unnamed occupants to come forward and immediately file claims followed by answers to the complaint (see step 18, below) and precludes postjudgment claims of right to possession (see step 37, below).

PREPARE FORM OF PREJUDGMENT CLAIM OF RIGHT TO POSSESSION

- a. Use form in CCP §415.46(f).
- b. Provide information required at top of form concerning the court, and provide names of plaintiff and defendant.

SERVE

What to Serve

Serve a copy of the prejudgment claim of right to possession attached to a copy of the summons and complaint.

Who Serves

Have a Marshal, sheriff, or registered process server serve.

When to Serve

Serve at the same time as serving tenant and subtenant, if any. See step 14, above.

How to Serve

Marshal, sheriff, or registered process server:

- a. Must make a reasonably diligent effort to ascertain whether there are other adult occupants of the premises who are not named in the summons and complaint, asking the persons being served or other apparent residents;
- b. Affixes a copy of prejudgment claim of right to possession, attached to a copy of summons and complaint, in a conspicuous place in a manner most likely to give actual notice to an occupant;
- c. States date of service on prejudgment claim of right to possession form (but failure to do so is not an invalidating error); *and*
 - (1) If occupant is known:
 - (a) Addresses a copy of prejudgment claim of right to possession, attached to a copy of summons and complaint, to occupant;
 - (b) Leaves it with a person of suitable age and discretion at the premises; and
 - (c) Sends a copy addressed to occupant by first-class mail; *or*
 - (2) If occupant is not disclosed, or substituted service is made on tenant:

(a) Leaves a copy of prejudgment claim of right to possession, attached to a copy of summons and complaint, at the premises; and

(b) Sends a copy addressed to "all occupants in care of the named tenant" to the premises by first-class mail.

OBTAIN PROOF OF SERVICE

a. Request Marshal, sheriff, or process server to provide you with properly completed and executed declaration of service immediately after service is made, using Proof of Service of Summons (Judicial Council Form POS-010).

b. Server must include a statement that service was made. CCP §415.46(d).

FILE PROOF OF SERVICE

File proof of service with the court. CCP §415.46(d).

MONITOR OCCUPANT'S RESPONSE

Periodically check register of actions (online or at clerk's office) for claims that occupants may have filed. See step 18, below. Occupant has (CCP §1174.25):

a. 10 days to file prejudgment claim of right to possession; and

b. 5 days to file a response to the complaint after filing the claim.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/When Filing Complaint/STEP 16. PURSUE DEFAULT JUDGMENT, IF APPROPRIATE

STEP 16. PURSUE DEFAULT JUDGMENT, IF APPROPRIATE

WHEN TO PURSUE

Pursue entry of default and default judgment if tenant fails to appear within 5 days after summons and complaint are served (CCP §§1167.3, 1169):

- a. If 5th day falls on weekend or holiday, tenant's response time is extended to next business day (CCP §12a);
- b. If tenant is served by "substituted service" (CCP §415.20), "post and mail" (CCP §415.45(c)), or "certified mail" (CCP §415.47) (see step 14, above), then 5-day period begins to run 10 days after mailing (CCP §§415.20, 415.45(c), 415.47(a)); and
- c. If a prejudgment claim of right to possession is served, 5-day period begins to run 10 days after service of prejudgment claim of right to possession. CCP §415.46(f).

HOW TO PROCEED

Under Cal Rules of Ct 1.31(a), landlord must use Request for Entry of Default (Application to Enter Default) (Judicial Council Form CIV-100) (revised January 1, 2007) (reprinted in App I and in Judicial Council Forms Man; Landlord-Tenant, chap 13). Landlord may, in addition, use optional Declaration for Default Judgment by Court (Judicial Council Form UD-116) (reprinted in App J) when seeking judgment based on declaration under CCP §585(d). Cal Rules of Ct 1.31(b).

Local Procedure

Check local default procedure with court clerk.

EXPEDITE PREMISES RECOVERY

Seek immediate judgment for possession and eviction of tenant to:

- a. Recover property quickly; and
- b. Keep property productive.

How to Obtain Judgment for Possession

a. Prepare and file Request for Entry of Default (Application to Enter Default) (Judicial Council Form CIV-100) (reprinted in App I):

- (1) Check and complete boxes for "Entry of Default," "Clerk's Judgment," and items 1a-1c and 1e(1) requesting court clerk to enter default and default judgment for restitution of premises *only* and to issue writ of execution immediately on that judgment;
- (2) Execute Declaration of Mailing on form (boxes 6a-6b); and
- (3) If you have served a prejudgment claim of right to possession, check additional box under 1e(1) to indicate that judgment includes "all tenants, subtenants, named claimants, and other occupants of the premises." See CCP §1169.

b. File with Request for Entry of Default and Clerk's Judgment:

- (1) Proposed judgment for possession, filled in with sufficient information for court clerk to execute (court will usually provide form); and
- (2) Proof of service of summons and complaint signed by process server on mandatory Proof of Service of Summons (Judicial Council Form POS-010) (CCP §§417.10(a), 1169).

c. If you named "Doe" defendants in the summons and complaint, check with the court on the need to file a Request for Dismissal (Judicial Council Form CIV-110), dismissing Doe defendants without prejudice. See Judicial Council Forms Man; Civ Proc Before Trial §39.130.

- d. Review local court policies and practices and, concurrently with (or after) entry of judgment, prepare and submit application for writ of possession, if court requires, and writ of possession of real property. On obtaining writ, see "Writ of Possession," [step 35](#), below. For Writ of Execution (Judicial Council Form EJ-130), see [App M](#).
- e. Instruct clerk to issue writ.
- f. Pay court fee to issue writ (contact clerk for amount).

Monitor Clerk's Processing of Default Papers

- a. After you have filed completed documents with the court, clerk *must* enter default and judgment for possession and issue writ of possession.
- b. If clerk does not enter default or default judgment immediately, check with clerk to see whether default papers were "rejected." If so, immediately correct error and resubmit.

Execute Judgment

Execute judgment for possession by having writ levied. See [step 36](#), below.

SEEK OTHER RELIEF

After securing tenant's eviction, obtain a court judgment for monetary relief by taking these steps:

- a. Ascertain damages through date possession is restored.
- b. Complete and file second application with court, using Request for Entry of Default (Application to Enter Default) (Judicial Council Form CIV-100) (reprinted in [App I](#)):
 - (1) Check and complete boxes for Court Judgment and items 1d and 2 ([CCP §1169](#));
 - (2) Complete and execute Declaration of Mailing on form (boxes 6a and 6b); and
 - (3) Complete and execute item 7, Memorandum of Costs.
- c. Depending on local court policy, prove your prima facie case ("prove up") to recover by either:
 - (1) Hearing ([CCP §585\(b\)](#)); or
 - (2) Proof by affidavit or declaration ([CCP §585\(d\)](#)).
- d. Show that landlord is entitled to relief demanded in complaint but not included in judgment for restitution ([CCP §585\(b\)](#)).

Landlord's Declaration

If you can submit landlord's declaration, include in it facts showing:

- a. That valid lease exists:
 - (1) If written lease, attach copy *and* state how you can prove tenant's signature, *e.g.*, landlord saw tenant sign lease or accepted payments with same signature; or
 - (2) If oral lease, delineate terms;
- b. Proof of allegations of unlawful detainer complaint (see [step 12](#), above);
- c. That appropriate statutory notice was served *and* tenant failed to comply (attach copies of notice and proof of service as exhibits);
- d. *If unlawful detainer was based on notice to pay rent or quit*: Amount of unpaid rent to date tenancy was terminated, with interest;
- e. Date possession was restored;
- f. Fair rental value of premises for each day tenant possessed premises after tenancy was terminated until possession was

restored, plus interest (if this is higher than lease amount, be prepared to prove it, *e.g.*, through testimony of broker familiar with area property);

g. *If you claim statutory damages:* That tenant had no reasonable belief in right to continued possession, or other evidence showing tenant's "malicious withholding" of premises; and

h. Amount of security or cleaning deposit withheld and, if applied, itemization of how applied.

NOTE

Advise landlord to apply security deposit first to damages *other than rent* (*e.g.*, physical damages and excessive wear and tear) because these items require a separate lawsuit to recover. See Landlord-Tenant, chaps 8-9.

Form for Landlord's Declaration

Check with court clerk for form declaration or draft your own. See optional Declaration for Default Judgment by Court (Judicial Council Form UD-116) when seeking money judgment based on declaration under CCP §585(d) (preprinted Judicial Council form and attorney-drafted declaration are both reprinted in App J).

Attorney's Declaration

If authorized by lease or rental agreement (CC §1717), set forth in your declaration the amount and reasonableness of your attorney fees.

EXECUTE MONEY JUDGMENT

Enforce default money judgment in same manner as for any civil money judgment. CCP §§695.010-695.220.

Further Research: See Landlord-Tenant, chap 13; Civ Proc Before Trial, chap 38.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/Anticipating Tenant Responses to Complaint/STEP 17. TENANT MAY MOVE TO SET ASIDE DEFAULT

Anticipating Tenant Responses to Complaint

STEP 17. TENANT MAY MOVE TO SET ASIDE DEFAULT

DEFAULT ENTERED

After default is entered, anticipate tenant's motion to set it aside. CCP §§473(b), 1010.

Further Research: See Landlord-Tenant, chap 13; Eviction Defense Man §§12.2, 12.13-12.14; Civ Proc Before Trial, chap 38.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/Anticipating Tenant Responses to Complaint/STEP 18. OCCUPANT MAY FILE PREJUDGMENT CLAIM OF RIGHT TO POSSESSION

STEP 18. OCCUPANT MAY FILE PREJUDGMENT CLAIM OF RIGHT TO POSSESSION

WHEN OCCUPANT MAY FILE

If landlord served a prejudgment claim of right to possession form under CCP §415.46 (see step 15, above), occupant (claimant) may file a prejudgment claim of right to possession within 10 days after date of service. The 10 days include Saturdays and Sundays but not holidays. CCP §1174.25.

CLAIMANT BECOMES DEFENDANT

- a. Claimant's filing of prejudgment claim constitutes a general appearance. CCP §1174.25(a).
- b. Claimant must pay filing fee (see Govt C §72056); claimant may seek waiver of fees (see Govt C §§68630-68641).
- c. Court adds claimant as a defendant and notifies plaintiff. CCP §1174.25(b).
- d. Claimant must respond to summons and complaint within 5 days after filing prejudgment claim of possession, including Saturdays and Sundays but excluding all other judicial holidays. CCP §1174.25(b).

LANDLORD ADDS CLAIMANT AS DEFENDANT AND GIVES NOTICE

- a. After claimant files, you must name claimant to any pleading, filing, or form filed in the action.
- b. To avoid defense that claimant was not served with notice, serve claimant with that notice after claimant's appearance.

NOTE

Occupant served with prejudgment claim of right to possession has no right to file a claim of right to possession after judgment. CCP §1174.3(a). See step 37, below.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/Anticipating Tenant Responses to Complaint/STEP 19. TENANT MAY VACATE PREMISES AFTER RECEIVING SUMMONS AND COMPLAINT BUT BEFORE TRIAL

STEP 19. TENANT MAY VACATE PREMISES AFTER RECEIVING SUMMONS AND COMPLAINT BUT BEFORE TRIAL

If tenant vacates premises:

- a. Do not expect an expedited trial, because possession of the premises is no longer at issue, although *if default has been entered*, court has discretion to proceed despite the fact that tenant has vacated. CC §1952.3(c).
- b. Consider amending complaint to seek additional relief. CC §1952.3(a)(1).
- c. Anticipate that tenant may seek:
 - (1) An order from the court removing the case from trial calendar and resetting it as an "ordinary" civil matter (CC §1952.3); and
 - (2) "Any affirmative relief" and assert all defenses and cross-actions. CC §1952.3(a)(2); *Heller v Melliday* (1943) 60 CA2d 689, 696, 141 P2d 447.
- d. If tenant vacates premises just before the trial date, be sure to inform trial or calendar court judge.

Further Research: See Landlord-Tenant, chap 11; Eviction Defense Man §§14.55, 15.16.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/Anticipating Tenant Responses to Complaint/STEP 20. TENANT MAY REQUEST ADDITIONAL TIME TO RESPOND TO COMPLAINT

STEP 20. TENANT MAY REQUEST ADDITIONAL TIME TO RESPOND TO COMPLAINT

If a tenant requests additional time to respond, make sure the request is made by stipulation or ex parte application before the 5-day period to respond expires. See CCP §§1054, 1167.5; Cal Rules of Ct 2.20, 3.1200-3.1207.

Further Research: See Landlord-Tenant, chap 10.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/Anticipating Tenant Responses to Complaint/STEP 21. TENANT MAY FILE TO PROCEED IN FORMA PAUPERIS

STEP 21. TENANT MAY FILE TO PROCEED IN FORMA PAUPERIS

WHEN AVAILABLE

Anticipate tenant's application to proceed in forma pauperis if tenant can show that it cannot afford filing or other fees (Cal Rules of Ct 3.50-3.63; see generally Eviction Defense Man, chap 10).

- a. For class of tenants entitled to fee waivers, see Govt C §§68630-68641.
- b. For categories of fees that can be waived and procedures, see Eviction Defense Man, chap 10.

Forms: For Application for Waiver of Court Fees and Costs (Judicial Council Form FW-001) and related forms, see Eviction Defense Man, Apps E-K; Judicial Council Forms Man.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/Anticipating Tenant Responses to Complaint/STEP 22. TENANT MAY MOVE TO QUASH SERVICE OF SUMMONS AND COMPLAINT

STEP 22. TENANT MAY MOVE TO QUASH SERVICE OF SUMMONS AND COMPLAINT

WHEN

Expect tenant's notice of motion to quash service under CCP §1167.4:

- a. Within 5 days after service of summons is complete (see "How to Serve," step 14, above); or
- b. If court grants tenant extension of time to file motion, within time granted. CCP §§418.10(a)(1), 1167.5.

GROUNDINGS

Tenant's counsel cannot file motion merely to delay proceedings (Cal Rules of Prof Cond 3-200), but only when:

- a. Summons or service of summons is defective, *i.e.*, court has no jurisdiction over tenant (see "How to Serve," step 14, above);
- b. Complaint fails to state unlawful detainer cause of action (*Delta Imports v Municipal Court* (1983) 146 CA3d 1033, 1036, 194 CR 685); or
- c. Complaint includes a cause of action not cognizable in an unlawful detainer action. A 5-day summons is then inappropriate. *Green v Municipal Court* (1975) 51 CA3d 446, 451, 124 CR 139.

Expect Special, Not General, Appearance

Expect tenant's counsel to avoid general appearance by noticing only motion to quash (special appearance) and not otherwise responding or taking actions (*e.g.*, moving for continuance or to disqualify judge) that afford court personal jurisdiction over tenant. CCP §§418.10(d), 1014. (Note that, although CCP §418.10(e) permits tenant to move to strike, answer, or demur simultaneously with motion to quash and preserve special appearance status, tenant will not likely do that.)

NOTE

Expect tenant to move to strike if complaint includes improper request for damages. See *Saberi v Bakhtiari* (1985) 169 CA3d 509, 517, 215 CR 359 (motion to quash service *not* proper remedy). For discussion of legal bases for motion to strike, see "Grounds," step 24, below.

FORMAT

The motion must include:

- a. Notice of motion;
- b. Factual declaration; and
- c. Memorandum of points and authorities.

Sample Form: For sample Notice of Motion to Quash Service of Summons, including sample declaration and supporting memorandum, see Eviction Defense Man, Apps U-Z; Landlord-Tenant §§10.28-10.28B.

HOW TO RESPOND

Correct Defect

If motion is well taken, moot it by *correcting defect*:

- a. If basis is improper service of summons and complaint, serve summons and complaint again, *properly*.
- b. If basis is defect in complaint:

(1) Amend defective complaint (CCP §472); and

(2) Serve amended complaint.

File Opposing Papers

If defect is disputed, challenge motion to quash:

a. File and serve opposing papers as soon as possible after being served and no later than the court day before the hearing (see Cal Rules of Ct 3.1327).

b. If tenant claims defective service, prepare declaration of process server.

NOTICE PERIOD FOR HEARING

a. A hearing is required to be held no less than 3 nor more than 7 days after notice is filed (CCP §1167.4(a)); as a practical matter, however, if the court calendar is crowded, expect hearing date beyond 7 days.

b. Landlord may apply for ex parte order shortening time. Cal Rules of Ct 3.1300(b).

Sample Form: For sample order, see Civ Proc Before Trial §§12.144-12.145.

EFFECT

Filing motion extends tenant's time to respond to unlawful detainer complaint until 5 days after being served with order denying motion. On showing of good cause, court may extend time to respond by an additional 15 days. CCP §1167.4.

Further Research: See Eviction Defense Man, chap 11; Landlord-Tenant, chap 10.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/Anticipating Tenant Responses to Complaint/STEP 23. TENANT MAY FILE DEMURRER

STEP 23. TENANT MAY FILE DEMURRER

WHEN

Unless tenant has filed a motion to quash, expect tenant's demurrer:

- a. Within 5 days after service *effected* (see [step 15](#), above; see also [CCP §§1167, 1170](#)); or
- b. If court grants tenant extension of time to respond, within time granted.

NOTE

Tenant may move to quash under [CCP §418.10](#) and simultaneously answer, demur, or move to strike the complaint while preserving special appearance status. Failure to file motion to quash with demurrer or motion to strike waives issues of personal jurisdiction, inadequate process, inadequate service, inconvenient forum, and delay in prosecution.

UNTIMELY DEMURRER

Tenant's failure to demur before or at time of answer waives all objections subject to demurrer ([CCP §430.80](#)) *except*:

- a. Lack of subject matter jurisdiction; and
- b. Failure to allege facts sufficient to state a cause of action.

GROUND

Tenant may file a demurrer on the same grounds as in other civil actions (see [CCP §430.10](#); [Cibils v Eltinge \(1973\) 29 CA3d 843, 847, 105 CR 864](#); [Eviction Defense Man §§13.3-13.4](#)).

- a. Remember that the defect must be on face of complaint or arise from a matter of which court may take judicial notice. [CCP §430.30\(a\)](#).
- b. As an attempt to reach defects in complaint not listed in [CCP §430.10](#), some tenants may file demurrer and motion to strike *simultaneously* (see "If Filing With Demurrer," [step 24](#), below).

NOTE

Dicta in [Delta Imports v Municipal Court \(1983\) 146 CA3d 1033, 194 CR 685](#), indicates motion to quash, not demurrer, is proper procedure when complaint fails to state unlawful detainer cause of action.

FORMAT

Analyze whether tenant has properly prepared demurrer. Tenant should have:

- a. Stated each ground specifically in separate paragraph;
- b. Stated whether ground applies to whole complaint or specified cause of action ([Cal Rules of Ct 3.1320\(a\)](#)); and
- c. Specified each matter of which court is asked to take judicial notice and provided copies of matter to court and all parties. [CCP §430.70](#); [Cal Rules of Ct 3.1306\(c\)](#). These matters may be in the demurrer or the memorandum of points and authorities.

Sample Form: For sample Demurrers to Complaint, including supporting memorandums, see [Eviction Defense Man §13.24](#), [Apps L-S](#); [Landlord-Tenant §§10.36-10.36A](#).

NOTICE PERIOD FOR HEARING

- a. Notice period for hearing is the same as for any other civil demurrer:

- (1) 16 court days if served personally;
 - (2) 16 court days plus 2 calendar days if served by fax, express mail, or other overnight delivery service. CCP §1005(b); or
 - (3) If served by mail:
 - (a) 16 court days plus 5 calendar days if place of mailing *and* address are in California;
 - (b) 16 court days plus 10 calendar days if place of mailing *or* address is in another state; and
 - (c) 16 court days plus 20 calendar days if place of mailing *or* address is outside United States. CCP §1005(b).
- b. California Rules of Court 3.1320(d) requires that demurrer be set for hearing within 35 days of filing or on date first available to the court after that. Move for ex parte order shortening time to set hearing earlier. Cal Rules of Ct 3.1300(b).
- c. Opposing and reply papers must be filed and served according to schedules in CCP §1005(b)-(c).

NOTE

If one party fails to appear, party present may request court to decide demurrer on merits. Court may do so or continue hearing for good cause. Cal Rules of Ct 3.1320(f).

EFFECT

a. *If demurrer is sustained, but defect is curable* (CCP §1167.3):

- (1) Court grants landlord leave to amend; and
- (2) Tenant's response is due within 5 days after landlord personally serves amended complaint (plus additional time prescribed under CCP §1013 if service is other than by personal delivery).

b. *If demurrer is sustained, but defect is not curable* (e.g., complaint fails to state cause of action), court does not grant landlord leave to amend.

c. *If demurrer is overruled*:

- (1) Answer (if not filed with demurrer) is due 5 days after notice of ruling is personally served on tenant (plus additional time prescribed by CCP §1013 if service is other than by personal delivery) (Cal Rules of Ct 3.1320(g)); *unless*
- (2) Tenant's counsel waives notice in open court (unlikely). CCP §472b.

AFTER RULING

If tenant fails to answer or appear after being properly served with notice of ruling on demurrer, landlord may seek entry of default and judgment (see step 16, above). CCP §§472b, 586(2).

SANCTIONS

Court can impose sanctions against party or counsel for bringing frivolous demurrer or for frivolously opposing demurrer. CCP §128.7. If sanctions appear appropriate, serve notice of motion for sanctions immediately, but do not file notice of motion for at least 21 days after service is effected. CCP §128.7(c)(1).

LANDLORD'S TACTICS

If Notice Is Defective

If you believe demurrer is meritorious because notice is defective, you will save time and money by dismissing the action without prejudice before the hearing, properly serving a new, correct notice on tenant, and then filing a new complaint (see steps 7-8, above).

If Demurrer Otherwise Has Merit

If demurrer has merit and pleading defect is curable (e.g., you omitted essential facts in the complaint, but notice was not defective), then consider filing an amended pleading and avoid fees and delay caused by responding to demurrer and attending

hearing. CCP §472.

TENANT'S TACTICS

Tenant can preserve objection by filing an answer (skipping demurrer) and then moving for judgment on the pleadings at the time of trial in order to:

- a. Remain in possession for a longer time than if tenant had filed a demurrer;
- b. Prevent landlord from amending complaint, forcing landlord to refile at an even later date; and
- c. Possibly recover attorney fees. See Landlord-Tenant, chap 13; Eviction Defense Man §13.1.

SET CASE FOR TRIAL

Despite tenant's demurrer, you are still entitled to a trial date 20 days after requesting trial setting. See "20-Day Rule," step 26, below. See also CCP §§1170, 1170.5.

Further Research: On trial setting, see Eviction Defense Man, chap 25; Landlord-Tenant, chap 11.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/Anticipating Tenant Responses to Complaint/STEP 24. TENANT MAY MOVE TO STRIKE

STEP 24. TENANT MAY MOVE TO STRIKE

WHEN

Tenant may move to strike within 5 days after service of summons and complaint is complete (see "How to Serve," [step 14](#), above), unless tenant has filed a motion to quash or secured an extension of time to respond. [CCP §§435\(b\)\(1\)](#), [1167](#).

NOTE

Although tenant may move to quash under [CCP §418.10\(e\)](#) and simultaneously answer, demur, or move to strike the complaint without making a general appearance, tenant will not likely do that. Failure to move to quash when filing demurrer or motion to strike waives issues of personal jurisdiction, inadequate process, inadequate service, inconvenient forum, and delay in prosecution.

IF FILING WITH DEMURRER

If demurring, tenant must file *both* motion to strike and demurrer *at the same time* and notice them both for hearing *at the same time*. [Cal Rules of Ct 3.1322\(b\)](#).

EFFECT OF MOTION TO STRIKE

Filing a motion to strike alone extends time to answer (but not to demur) under [CCP §435\(c\)](#) until 5 days after service on tenant of notice of ruling. [CCP §§586](#), [1167.3](#).

GROUNDINGS

a. Tenant may move to strike from complaint or prayer any "irrelevant, false, or improper matter" or any part of pleading "not drawn or filed in conformity with" state law, or court rules, or orders ([CCP §§435-436](#)), *e.g.*:

- (1) Irrelevant material that could injure tenant before jury;
- (2) Request for damages in prayer not related to scope of unlawful detainer action (see [CCP §1174](#); [Saberi v Bakhtiari \(1985\) 169 CA3d 509, 517, 215 CR 359](#));
- (3) Unsupported allegation and prayer for statutory damages, *e.g.*, facts in complaint do not show requisite malice ([CCP §1174\(b\)](#));
- (4) Improper request in prayer for back rent (see "Back Rent Due," [step 12](#), above); or
- (5) Complaint not verified, improperly verified, or filed without authorization.

b. Tenant must base motion on defect ([CCP §437](#)):

- (1) On face of complaint; or
- (2) Of which court can take judicial notice.

NOTE

In unlawful detainer actions, tenant's grounds for a motion to strike are not limited by [CCP §92\(d\)](#), which allows a defendant in a limited civil case to attack only damages or relief not supported by the allegations. See [CCP §91\(b\)](#), which states that [CCP §§90-100](#) do not apply to unlawful detainer actions.

FORMAT

a. Tenant specifies portions of complaint or prayer for court to strike and sets forth each word to be stricken unless moving to strike entire paragraph or cause of action. [Cal Rules of Ct 3.1322\(a\)](#).

b. Tenant submits a supporting memorandum. [Cal Rules of Ct 3.1113](#).

Sample Form: For sample Notice of Motion to Strike including sample supporting memorandum, see Eviction Defense Man §13.33, Apps S-T; Landlord-Tenant §10.47.

HOW TO RESPOND

If Motion Well Taken

If motion is well taken:

- a. Consider filing an amended complaint before the hearing (CCP §472); or
- b. Consider stipulating to strike offending portions, thus avoiding unnecessary fees and loss of time.

If Improper Motion

If motion is improper, immediately apply for an order advancing the hearing date and, if granted, serve the order with opposing papers. Alternatively, oppose the motion and seek sanctions, including attorney fees under CCP §128.7, by separate motion. If sanctions appear appropriate, serve notice of motion for sanctions immediately, but do not file notice of motion for at least 21 days after service is effected to allow tenant time to withdraw or amend motion to strike. CCP §128.7(c)(1).

NOTICE PERIOD FOR HEARING

Written Notice

Notice period for hearing is the same as for any other civil motion to strike:

- a. 16 court days if served personally;
- b. 16 court days plus 2 calendar days if served by fax, express mail, or other overnight delivery service. CCP §1005(b); or
- c. If served by mail:
 - (1) 16 court days plus 5 calendar days if place of mailing *and* address are in California;
 - (2) 16 court days plus 10 calendar days if place of mailing *or* address is in another state; or
 - (3) 16 court days plus 20 calendar days if place of mailing *or* address is outside United States. CCP §1005(b).

Opposition and Reply

Opposing and reply papers must be filed and served according to schedules in CCP §1005(b)-(c). Landlord may move for ex parte order shortening time to set hearing earlier. Cal Rules of Ct 3.1300(b).

EFFECT OF HEARING

After court overrules or grants motion to strike the complaint *in part*, tenant must file and serve an answer *within 5 days*. CCP §1167.3.

Further Research: See Landlord-Tenant, chap 10; Eviction Defense Man §§13.34-13.39.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/Anticipating Tenant Responses to Complaint/STEP 25. TENANT FILES ANSWER

STEP 25. TENANT FILES ANSWER

FILE 5 DAYS AFTER SERVICE

Unless tenant has filed another pleading or secured an extension, tenant must file its answer within 5 days after service of complaint and summons is *effected*. See CCP §§1167.3, 1170, cited in step 15, above. See also CCP §1167.5. The California Rules of Court permit superior court litigants to file documents electronically. Cal Rules of Ct 2.250-2.261.

JURY TRIAL DEMAND

Tenant seeking jury:

- a. Ordinarily demands jury in request (or counter-request) to set case for trial (see step 26, below); or
- b. Files and serves a separate notice demanding jury trial at the same time as filing and serving answer. CCP §1171.

Sample Forms: Tenant may use Answer—Unlawful Detainer (Judicial Council Form UD-105) (reprinted in Eviction Defense Man, App D; Judicial Council Forms Man). For attorney-drafted answer form, see Eviction Defense Man, App B. On grounds for affirmative defenses, see Eviction Defense Man, chaps 14-19; Landlord-Tenant, chap 10.

WHAT TO EXPECT

Answer will state denials and affirmative defenses.

SPECIFIC OR GENERAL DENIAL

GENERAL DENIAL

If demand or leasehold value of property in controversy does *not* exceed \$1000, tenant may allege "general denial." CCP §431.40.

SPECIFIC DENIAL

If demand or leasehold value of property *does* exceed \$1000, tenant must allege specific denial of each paragraph of complaint. CCP §431.30.

AFFIRMATIVE DEFENSES

LANDLORD LACKS TITLE

Landlord lacks title to property: Generally *unavailable* unless landlord puts it in issue or filed action under CCP §§1161a-1161b (foreclosure). See Landlord-Tenant, chaps 8, 10.

LANDLORD COMMITTED FRAUD

Landlord committed fraud when lease was executed: Generally *unavailable* unless tenant possessed premises when lease was executed. See Kalmanovitz v Rempp (1952) 111 CA2d 242, 246, 244 P2d 457; Landlord-Tenant, chap 10; Eviction Defense Man §14.31.

LANDLORD BREACHED COVENANT OF QUIET ENJOYMENT

Landlord engaged in acts interfering with tenant's right to use and enjoy property: May be available (under Green v Superior Court (1974) 10 C3d 616, 627, 111 CR 704) if landlord:

- a. Exceeded his or her limited right to enter property (codified for residential property in CC §1954; see Landlord-Tenant, chaps 3-5);

- b. Acted to illegally and adversely affect tenant's rights (see *McAlester v Landers* (1886) 70 C 79, 82, 11 P 505 (leased part of raw land already under lease to another));
- c. Physically acted to interfere (see *McDowell v Hyman* (1897) 117 C 67, 71, 48 P 984 (renovated adjacent premises, producing uninhabitability of tenant's property)); or
- d. Brought unlawful detainer action in bad faith. See *Levitzy v Canning* (1867) 33 C 299, 307.

Proving breach of the covenant of quiet enjoyment is similar to proving constructive eviction. Tenant's defense of breach of the covenant of quiet enjoyment is not well documented in the law and, arguably, may apply in nonpayment-of-rent cases to reduce the amount of rent due. However, cross-complaints are not allowed in unlawful detainer actions (*Knowles v Robinson* (1963) 60 C2d 620, 36 CR 33; see CCP §1170), and affirmative relief may not be claimed in the answer (CCP §431.30(c)).

Waiver of Right in Commercial Lease

In commercial tenancies, an agreement modifying or waiving the covenant of quiet enjoyment is enforceable. See *Lee v Placer Title Co.* (1994) 28 CA4th 503, 33 CR2d 572.

Further Research: See Landlord-Tenant, chaps 3, 10; Eviction Defense Man, chaps 14, 19.

WAIVER OR ESTOPPEL

Definitions

Waiver: Landlord knowingly and intentionally relinquishes a right, expressly or impliedly.

Estoppel: Landlord's conduct causes tenant's belief that strict compliance with a particular covenant is not required, and tenant detrimentally relies on that belief. See *Salton Community Servs. Dist. v Southard* (1967) 256 CA2d 526, 531, 64 CR 246.

When Available

Waiver or estoppel are available:

- a. If landlord accepted rent after tenant breached lease covenant *unless* lease contains provision that acceptance of rent does *not* constitute waiver (but tenant may counter this by arguing that landlord entered into executed oral modification of lease) (see *Kern Sunset Oil Co. v Good Roads Oil Co.* (1931) 214 C 435, 445, 6 P2d 71; *EDC Assoc. v Gutierre* (1984) 153 CA3d 167, 171, 200 CR 333); or
- b. If landlord had full knowledge of tenant's breach but failed to object. See *Group Prop., Inc. v Bruce* (1952) 113 CA2d 549, 556, 248 P2d 761.

Generally Not Available

Waiver/Estoppel are not available on subsequent notice of breach after waiver of first breach if lease provides for continuing performance by tenant of the condition or covenant. See *Budaeff v Huber* (1961) 194 CA2d 12, 20, 14 CR 729.

Further Research: For further discussion of waiver based on landlord's acceptance of full or partial rent payment after service of 3-day notice to pay rent or quit, see step 10, above. See also Landlord-Tenant, chap 10; Eviction Defense Man §14.33.

LANDLORD BREACHED PROMISE TO REPAIR

Landlord breached promise to repair: Availability depends on type of tenancy.

Residential Tenancy

Defense *may be available* if landlord failed to make repairs promised in lease or in additional agreements. Tenant claims this breach strikes at heart of rights under lease. See, e.g., *Green v Superior Court* (1974) 10 C3d 616, 636, 111 CR 704.

Commercial Tenancy

Defense *probably not available* to commercial tenants. See *Schulman v Vera* (1980) 108 CA3d 552, 561, 166 CR 620.

Further Research: See Landlord-Tenant §§3.8-3.15, chap 10. But see Eviction Defense Man §19.5.

LANDLORD BREACHED IMPLIED WARRANTY OF HABITABILITY

Landlord breached implied warranty of habitability: Availability depends on type of tenancy.

Residential Tenancy

Defense *available* to residential tenants only in unlawful detainer action based on nonpayment of rent if landlord failed to keep premises free of defects that interfere with habitability, *e.g.*, health or safety code violations such as CC §§1941-1941.1 and 1941.3 violations. CCP §1174.2; Green v Superior Court (1974) 10 C3d 616, 638, 111 CR 704; Hyatt v Tedesco (2002) 96 CA4th Supp 62, 117 CR2d 921. See step 33, below.

NOTE

Breach of warranty of habitability exists from the time of notice to landlord, whether or not landlord has had reasonable time to repair. Knicht v Hallsthammar (1981) 29 C3d 46, 55, 171 CR 707.

Commercial Tenancy

Defense *probably not available* to commercial tenants. See Schulman v Vera (1980) 108 CA3d 552, 561, 166 CR 620. But see Custom Parking, Inc. v Superior Court (1982) 138 CA3d 90, 101, 187 CR 674.

Further Research: See Eviction Defense Man, chaps 14-15, 19; Landlord-Tenant, chaps 3, 12.

LANDLORD BREACHED STATUTORY WARRANTY OF HABITABILITY

Landlord breached statutory warranty of habitability: Available to residential tenants in unlawful detainer action based on nonpayment of rent if dwelling substantially lacks habitability standards, *e.g.*, specified health or safety code violations and others listed in CC §§1941-1941.1, and landlord fails to repair after written governmental notice. See CC §1942.4. See also steps 33, 38, below.

RETALIATORY EVICTION

Definition

Retaliatory eviction: Wrongful eviction intended to penalize tenant or be an example to other tenants when tenant's act was legally protected. CC §§1942, 1942.5. Punitive damages of up to \$2000 per retaliatory act awarded if tenant establishes fraud, oppression, or malice. CC §1942.5(f).

Availability of retaliatory eviction defense depends on circumstances, as follows.

Residential Tenant

Defense *available* when (CC §1942.5):

- a. Landlord failed to keep premises in habitable condition;
- b. Tenant complained to landlord or appropriate governmental agency (see Knicht v Hallsthammar (1981) 29 C3d 46, 57, 171 CR 707; Kemp v Schultz (1981) 121 CA3d Supp 13, 17, 175 CR 412 (oral complaint to landlord sufficient)); and
- c. Landlord evicted tenant within 180 days after tenant's complaint.

NOTE

If landlord serves eviction notice after 180-day period expires, tenant may instead be able to rely on common law retaliatory eviction theories. See Barela v Superior Court (1981) 30 C3d 244, 253, 178 CR 618.

Commercial Tenant

Same defense as for residential tenant *may be available*. See Custom Parking, Inc. v Superior Court (1982) 138 CA3d 90, 101, 187 CR 674.

Foreclosure Sale

Defense *not available* to occupant in unlawful detainer action brought by purchaser under CCP §1161a after foreclosure sale. California Livestock Prod. Credit Ass'n v Sutfin (1985) 165 CA3d 136, 143, 211 CR 152. On evictions following foreclosure, see step

2, above.

NOTE

Instead of raising retaliatory eviction as a defense, tenant may be able to file a special motion to strike under CCP §425.16, the strategic lawsuit against public participation (SLAPP) statute. See Ketchum v Moses (2001) 24 C4th 1122, 104 CR2d 377; Dowling v Zimmerman (2001) 85 CA4th 1400, 103 CR2d 174, discussed in Landlord-Tenant §§5.18A, 10.38A, 13.40A.

Further Research: On retaliatory eviction as defense to unlawful detainer actions, see Landlord-Tenant, chaps 8, 10, 12; Eviction Defense Man, chaps 16, 19. This defense has limited application in Ellis Act (Govt C §§7060-7060.7) evictions. See Landlord-Tenant, chap 7; Eviction Defense Man, chap 17.

DISCRIMINATORY EVICTION

Discriminatory eviction: Available when:

a. Landlord evicts tenant who falls within protected class, *e.g.*, race (see Abstract Inv. Co. v Hutchinson (1962) 204 CA2d 242, 247, 22 CR 309), or who sublet to subtenant in that class (Winchell v English (1976) 62 CA3d 125, 129, 133 CR 20); or

b. Landlord violates Unruh Civil Rights Act (CC §51) by evicting tenant:

(1) Who falls within protected category, *e.g.*, age, sex, marital status, family with children (see Marina Point, Ltd. v Wolfson (1982) 30 C3d 721, 730, 180 CR 496); or

(2) "Arbitrarily" or without "good cause." See Stoumen v Reilly (1951) 37 C2d 713, 716, 234 P2d 969.

NOTE

Tenant may claim that Unruh Civil Rights Act violations extend to eviction unless landlord proves good cause.

Further Research: See CC §51; Landlord-Tenant, chaps 2, 4, 10; Eviction Defense Man §§14.14-14.22.

LANDLORD BREACHED IMPLIED COVENANT OF GOOD FAITH

Landlord breached implied covenant of good faith: Available when landlord improperly uses legal system to evict tenant. See, e.g., Bedi v McMullan (1984) 160 CA3d 272, 275, 206 CR 578 (invalid writ).

LANDLORD BREACHED LEASE PROVISION PROHIBITING UNREASONABLE WITHHOLDING OF CONSENT TO TRANSFER

Landlord breached lease provision prohibiting unreasonable withholding of consent to transfer: Available when landlord lacks "commercially reasonable objection" in refusing commercial tenant permission to assign lease when lease contains no standards for objection (see CC §§1995.010-1995.340; see also CC §1951.4; Kendell v Ernest Pestana, Inc. (1985) 40 C3d 488, 496, 220 CR 818):

a. Landlord may base "commercially reasonable objection" on:

(1) Assignee's financial condition;

(2) Legality, purpose, and suitability of assignee's use of property;

(3) Whether premises will require alteration; or

(4) Amount of rent landlord will receive from new assignee if rent is based on sales or other business measure.

b. If lease *absolutely* prohibits assignment, "commercially reasonable objection" test does not apply.

Further Research: See Landlord-Tenant, chaps 1, 3; Eviction Defense Man §§14.30, 19.8-19.9; Office Leasing: Drafting and Negotiating the Lease, chap 24 (Cal CEB 1996).

LANDLORD BREACHED RENT CONTROL ORDINANCE

Landlord breached rent control ordinance: Available when landlord violates local rent control ordinance, e.g., lacked good faith purpose for eviction. See, e.g., San Francisco Adm C §37.9(a)(8); Santa Monica City Charter art XVIII, §1806. See also Action Apartment Ass'n v City of Santa Monica (2007) 41 C4th 1232, 63 CR3d 398.

DEFECTIVE 3-DAY NOTICE

Defective 3-day notice: Available when defective notice constitutes new matter tenant did not put in issue by denials in answer.

Further Research: See Landlord-Tenant, chap 13.

FOR ALL ANSWERS

TENANT VERIFIES ANSWERS

Because landlord verifies complaint, tenant must verify answer (CCP §446) *except* when demand for back rent and damages in the complaint is less than \$1000. See CCP §431.40.

CROSS-COMPLAINT

Cross-complaint generally is not allowed because of expedited nature of unlawful detainer action. See Knowles v Robinson (1963) 60 C2d 620, 625, 36 CR 33; CCP §428.50. If tenant vacates the premises before trial, the case becomes an ordinary civil action, and tenant may file a cross-complaint. CC §1952.3(a); Fish Constr. Co. v Moselle Coach Works, Inc. (1983) 148 CA3d 654, 196 CR 174.

Further Research: See Landlord-Tenant, chaps 9-11.

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After Tenant Responds

STEP 26. SET CASE FOR TRIAL

REQUEST TRIAL SETTING

Use Mandatory Form

Although no statewide statute or court rule addresses the procedural aspects of setting unlawful detainer actions for trial, the Judicial Council adopted a mandatory form; see Request/Counter-Request to Set Case for Trial—Unlawful Detainer (Judicial Council Form UD-150) (reprinted in [App H](#)).

NOTE

For good cause, a motion may be made to advance, specially set, or reset a trial date ([Cal Rules of Ct 3.1335](#)) or for a continuance ([Cal Rules of Ct 3.1332](#)). The grounds for finding good cause are given in [Cal Rules of Ct 3.1332\(c\)-\(d\)](#). Extensions of unlawful detainer trial dates are strictly limited by [CCP §1170.5\(c\)](#), which requires a hearing. The court may order tenant to pay rent into court as a condition to the court's granting an extension.

20-Day Rule

Be aware that, if tenant has appeared, trial must be held no more than 20 days after landlord files request to set. [CCP §§1170, 1170.5](#).

WHEN TO FILE

File request to set after answer or demurrer is filed.

IF TRIAL DELAYED

Move that tenant deposit into court damages that landlord suffered because of delay ([CCP §1170.5\(c\)](#)) if trial is delayed more than 20 days after trial-setting request because of:

- a. Tenant's request for [CCP §1170.5](#) extension of trial date; or
- b. Court's delay in setting trial.

Motion

Show facts indicating ([CCP §1170.5\(c\)](#)):

- a. Reasonable probability that landlord will prevail; and
- b. Amount of damages tenant should pay into court.

Effect

If tenant does not deposit payment ordered by date payment is due, trial is held within 15 days after due date. [CCP §1170.5\(d\)](#).

NOTE

Ask the court to hear the matter within 20 days ([CCP §1170.5\(a\)](#)) rather than passively relying on [CCP §1170.5\(c\)](#).

JURY TRIAL

a. Landlords rarely demand jury trial. If desired, indicate so in the Request/Counter-Request to Set Case for Trial—Unlawful Detainer (Judicial Council Form UD-150) (reprinted in [App H](#)).

b. Tenant indicates demand for jury in a separate pleading that is filed with the answer or in Request/Counter-Request to Set Case for Trial—Unlawful Detainer (Judicial Council Form UD-150) (reprinted in [App H](#)).

c. Party demanding jury posts 1 day's jury fees at least 5 days before trial date. [CCP §631\(b\)-\(c\)](#).

d. Expect tenant to post fees as soon as memorandum is received, unless fees are waived because of proceeding in forma pauperis. See [step 21](#), above.

Further Research: See [Landlord-Tenant, chap 12](#); [Eviction Defense Man, chap 25](#). On rules regarding use of jury instructions approved by California Judicial Council, including preparing jury instructions, see [Cal Rules of Ct 2.1050-2.1058](#).

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/After Tenant Responds/STEP 27. TACTICS FOR LANDLORD IF EVICTION IS STAYED BY BANKRUPTCY FILING

STEP 27. TACTICS FOR LANDLORD IF EVICTION IS STAYED BY BANKRUPTCY FILING

IF EVICTION PROCEEDINGS STAYED

Tenant's filing of bankruptcy petition automatically stays commencement or continuation of landlord's acts to obtain possession of property (see 11 USC §§362(a), 541; Notice of Stay of Proceedings (Judicial Council Form CM-180; Mandatory), reprinted in [App N](#)). If eviction proceedings are stayed, be aware that:

- a. Tenant's leasehold interest becomes property of the bankruptcy estate on filing of the petition (see 11 USC §§362(a)(3), 362(b)(10), 541(a)), and bankruptcy trustee has authority to act on behalf of tenant (or tenant becomes debtor in possession) (see 11 USC §§321, 704, 1107(a); see also [Landlord-Tenant, chap 14](#); [Eviction Defense Man, chap 21](#));
- b. A Motion for Relief From Automatic Stay (stay relief motion) may be required before an eviction action may be brought or continued (see "When to Bring Motion for Relief From Stay," this step, below), unless a bankruptcy law exception applies; and
- c. Sanctions or damages for violating stay are expensive (see 11 USC §362(h); *Associated Credit Servs., Inc. v Champion (In re Champion)* (BAP 9th Cir 2003) 294 BR 313; *Dawson v Washington Mut. Bank (In re Dawson)* (9th Cir 2004) 390 F3d 1139).

NOTE

[Code of Civil Procedure §715.050](#) requires that judgment for possession be enforced without delay, despite receipt of notice that tenant filed a bankruptcy petition. But in *Westside Apartments v Butler (In re Butler)* (Bankr CD Cal 2002) 271 BR 867, a bankruptcy court held that [§715.050](#) is preempted by 11 USC §362 and is therefore unenforceable. When tenant files bankruptcy after a state court enters judgment for possession, the bankruptcy courts have exclusive jurisdiction to decide whether the judgment is preclusive. See *Huse v Huse-Sporsen (In re Birting Fisheries, Inc.)* (BAP 9th Cir 2003) 300 BR 489. Under federal law, residential tenants may prevent the eviction if they take specific affirmative steps in their bankruptcy proceeding to keep the stay in effect. See 11 USC §362(b)(22)-(23) and "Exceptions to Stay," this step, below.

Review BAPCPA

Review changes made by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) (Pub L 109-8, 119 Stat 23), which alters most rules that govern landlord-tenant relationships when tenant files for bankruptcy relief. For further discussion, see [Landlord-Tenant, chap 14](#).

Research Repeat Filings

As amended by BAPCPA, bankruptcy law further restricts the availability of the automatic stay to individual or joint debtors who are repeat bankruptcy filers. See 11 USC §362(c)(3)-(4), discussed in [Landlord-Tenant §14.4](#).

Review Exceptions to Stay

As amended by BAPCPA, 11 USC §362(b) provides specific statutory exceptions to the stay that allow landlords to pursue the following remedies without a stay relief order from a bankruptcy court:

- a. Taking action to obtain possession of nonresidential property if the lease expired before tenant's bankruptcy filing (11 USC §362(b)(10), (c)(1), 541(b)(2); this exception existed before BAPCPA was enacted).

NOTE

Before concluding that an order from the bankruptcy court is not required, review lease to confirm it does not provide automatic renewal, conversion to month-to-month tenancy, or other holdover entitlement on expiration of stated term.

- b. Subject to 11 USC §362(l), prosecuting any eviction, unlawful detainer, or similar action commenced prepetition by landlord of residential real estate against debtor-tenant, if landlord obtained a judgment for possession prepetition (11 USC §362(b)(22)).

NOTE

Title 11 USC §362(l) limits the application of 11 USC §362(b)(22) if tenant, within 30 days after the petition date, certifies that under applicable nonbankruptcy law there are circumstances permitting tenant to cure the entire monetary default, and tenant deposits with the clerk of the court the rent due for the initial 30-day postpetition period. 11 USC §362(l)(1). Unless landlord files a timely objection and the matter goes to a hearing, tenant can continue the stay after the 30-day period if tenant, within the 30-day period, certifies that tenant has cured the monetary default. 11 USC §362(l)(2). If no certification is filed by tenant, or if the judgment for possession was not based on a monetary default, then the exception to the stay in 11 USC §362(b)(22) would apply and allow the eviction to proceed. Landlord should monitor the bankruptcy filings to confirm tenant's certification and that cure has occurred.

c. Subject to 11 USC §362(m), prosecuting any eviction against a debtor-tenant based on endangerment of the property or illegal use of controlled substances on the property, if landlord certifies under penalty of perjury that the eviction action has been filed or that tenant committed such acts within 30 days before the petition date (11 USC §362(b)(23)).

NOTE

Under 11 USC §362(m), the exception to the stay in 11 USC §362(b)(23) applies if landlord files and serves on tenant the specified certification. So unlike a true exception, this exception applies only if it is affirmatively invoked by landlord. If landlord does file the certification, the stay will last only for 15 days after the certification is filed, unless debtor-tenant objects to it within that 15-day period. In that event, to keep the stay in effect, the bankruptcy court will hold a hearing to determine whether the situation did not exist or has been remedied.

Further Research: For discussion of these exceptions, their procedures, and bankruptcy court forms, see Landlord-Tenant, chap 14.

When You May Proceed With State Court Action

- a. You may safely proceed with a state court action for unlawful detainer without a stay relief order from the bankruptcy court in the limited event that the debtor's interest in a *nonresidential* lease expired at the end of the stated term under the lease and before the filing or during the pendency of the bankruptcy. See 11 USC §541(b)(2). See also 11 USC §362(b)(10), (c)(1).
- b. If lease was terminated before the expiration of the stated term (*e.g.*, because of tenant default), landlord must seek stay relief or a surrender order, unless one of the exceptions to the stay in BAPCPA applies. Confirm whether 3-day notice included a forfeiture of the lease. See *Vanderpark Props. v Buchbinder (In re Windmill Farms, Inc.)* (9th Cir 1988) 841 F2d 1467.
- c. In doubtful situations, landlord may file a motion for an order confirming that the automatic stay does not apply or annulling the stay for postpetition acts.

Further Research: See Landlord-Tenant §§14.9, 14.11, 14.16-14.31.

WHEN TO BRING MOTION FOR RELIEF FROM STAY

Under 11 USC §362(d), you may bring immediate motion for relief from automatic stay if:

- a. Landlord is not receiving postpetition rent payments (see authorities cited in Landlord-Tenant §14.45);
- b. The lease term has not expired or the tenancy is month-to-month;
- c. Landlord has fully evaluated the situation and is willing to risk having a vacancy; and
- d. Trustee or debtor in possession does not (on landlord's request) provide adequate assurances of performance and assume lease (see "If Trustee or Debtor in Possession Is Assuming Lease," this step, below).

Alternative Motions

The court may not be willing to grant stay relief early in the bankruptcy if there is any possibility of value in the lease for assumption and assignment to a third party. Consider, therefore, bringing alternative motions to compel trustee or debtor in possession to:

- a. Assume or reject lease by a specific date (effectively shortening the statutory period for assumption or rejection); and
- b. Provide adequate protection by making postpetition payments at the lease rate until assumption or rejection occurs. See Landlord-Tenant, chap 14.

Further Research: See forms for stay relief motion, orders, and notice of order in [Apps O-R](#). See discussion and additional forms for stay relief and collecting postpetition payments in [Landlord-Tenant, chap 14](#). See also Moving for Relief From an Automatic Stay in Bankruptcy (Cal CEB Action Guide September 2006), referred to throughout this Action Guide as Moving for Relief.

Move Immediately

- a. Avoid delay and uncertainty by obtaining either stay relief or court order compelling trustee or debtor in possession to assume or reject lease at earliest possible time.
- b. You do not have to wait for trustee or debtor in possession to act or for expiration of the statutory assumption or rejection period stated in 11 USC §365(d) to file a motion under 11 USC §362(d)(2).

NOTE

Be aware that bankruptcy courts are often inclined to give debtors the full statutory period to assume or reject leases. Commercial debtor-tenants, however, are required to perform all postpetition obligations of the lease pending a decision whether to assume or reject. 11 USC §365(d)(3). Therefore, a commercial debtor-tenant's failure to stay current on postpetition rent payments can provide a basis for shortening the time to assume or reject or for granting relief from stay.

Effect of Rejection on Possession

- a. If lease is rejected voluntarily, or automatically rejected because trustee or debtor fails to act within statutory assumption or rejection period, trustee or debtor should surrender possession to landlord to obviate any need for stay relief. If possession is not surrendered voluntarily, landlord must file a motion and obtain relief from bankruptcy court to regain possession.
- b. If statutory period for assumption or rejection of *nonresidential* lease expires without a decision, lease is deemed rejected and trustee or debtor must surrender possession immediately. 11 USC §365(d)(4). If possession is not surrendered, landlord should move for an order for immediate possession, enforceable by a writ. See *Anderson v Elm Inn, Inc. (In re Elm Inn, Inc.)* (9th Cir 1991) 942 F2d 630, 633; *George v County of San Luis Obispo* (2000) 78 CA4th 1048, 93 CR2d 595.
- c. If lease is rejected and landlord is restored to possession by voluntary surrender or bankruptcy court surrender order (or relief from stay order), consider filing general unsecured claim for rejection damages. See discussion and form in [Landlord-Tenant §§14.55, 14.59](#).

Include Writ of Possession

Include in your stay relief motion a request that the bankruptcy court:

- a. Order actual surrender of possession of the property and issue a writ of possession; or
- b. Alternatively, allow for commencement or continuation of an unlawful detainer action (or any other state court action necessary to obtain possession).

NOTE

If bankruptcy court orders surrender and directs issuance of writ, landlord can regain possession without state court proceedings. In that event, generally a *federal officer* (such as the U.S. Marshal's office) would levy the writ.

Further Research: See Moving for Relief; [Landlord-Tenant, chap 14](#).

WAIT FOR ASSUMPTION OR REJECTION

If you do not move for relief from the automatic stay, or if you lose the motion, then lease is deemed automatically rejected *unless* trustee or debtor in possession assumes lease within statutory period (11 USC §365(d)(1)-(4)):

Commercial Lease

A nonresidential real property lease must be assumed or rejected by *the earlier of* 120 days after the date of the order for relief (typically the day the petition was filed) or the date of entry of an order confirming a plan of reorganization, or for an additional 90 days allowed by the court for cause, up to a maximum of 210 days, unless landlord gives prior written consent to further extension beyond 210 days. See 11 USC §365(d)(4)(A)-(B); [Landlord-Tenant §14.44](#).

Residential Lease

A residential real property lease must be assumed or rejected within 60 days after the order for relief in a Chapter 7 proceeding (liquidation). 11 USC §365(d)(1). In Chapter 9 (adjustment of municipality debts), Chapter 11 (reorganization of debts of an individual not qualified for Chapter 13), or Chapter 13 (adjustment of debts of an individual with regular income), tenant or trustee may assume or reject a residential lease at any time before a plan is confirmed, or within such other time as court may order on landlord's motion. See 11 USC §365(d)(2); Landlord-Tenant §14.34.

NOTE

A lease that has expired by its own terms is no longer executory and therefore cannot be assumed or rejected. See Landlord-Tenant §14.41.

IF TRUSTEE OR DEBTOR IN POSSESSION IS ASSUMING LEASE

If trustee or debtor in possession moves to assume lease:

- a. Prepare for hearing on motion to assume. Fed R Bankr P 9014.
- b. Make sure motion was filed within the required statutory periods (see "Wait for Assumption or Rejection," this step, above).
- c. Demand that trustee or debtor in possession (11 USC §365(a), (b)(1)):
 - (1) Cure or provide adequate assurance that all defaults under the lease will be cured;
 - (2) Compensate landlord, or provide adequate assurances of prompt compensation, for all pecuniary losses resulting from the default; and
 - (3) Provide adequate assurance of future performance.
- d. Consider filing an administrative priority claim to collect postpetition rent. See discussion and forms in Landlord-Tenant, chap 14.

IF BANKRUPTCY FILED IN BAD FAITH

A bankruptcy petition must be filed in good faith. See, e.g., *Price v U.S. Trustee (In re Price)* (9th Cir 2004) 353 F3d 1135. Be aware of the following:

- a. Filing a petition as a tactic to delay eviction rather than for economic relief under bankruptcy law would probably be construed as a bad faith filing. See *National Home Equity Corp. v Villareal (In re Villareal)* (Bankr CD Cal 1984) 46 BR 284.
- b. The Bankruptcy Code was designed to prevent serial, bad faith filings by individuals and small businesses. See 11 USC §§109(g), 362(c)(4), (n)(1).
- c. Bankruptcy courts have the power to impose sanctions and other penalties against tenant (or tenant's attorney) under numerous sections of the Bankruptcy Code and Fed R Bankr P 9011. See, e.g., *Miller v Cardinale (In re Deville)* (9th Cir 2004) 361 F3d 539.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/After Tenant Responds/STEP 28. ENGAGE IN DISCOVERY, IF APPROPRIATE

STEP 28. ENGAGE IN DISCOVERY, IF APPROPRIATE

WEIGH ADVANTAGES AND DISADVANTAGES

Advantages

You may learn identities of all occupants of premises and information about tenant's affirmative defenses. CCP §§2016.010-2036.050.

Disadvantages

If discovery leads to delay in obtaining an early trial date, you lose the expedited nature of the unlawful detainer proceeding. CCP §1170.5.

CONSIDER ALTERNATIVE ACTION

Consider whether you can obtain and effectively use information by compelling witnesses, with or without documents, to appear and testify at trial. See CCP §1985.

ANTICIPATE TENANT'S DISCOVERY

Advantages

Tenant may be able to obtain information to strengthen affirmative defenses. For discussion of affirmative defenses, see step 25, above.

Disadvantages

Court may require tenant to pay into court the amount of rent otherwise due and payable during time matter is extended to allow discovery. CCP §1170.5.

SPECIAL DISCOVERY RULES

REVIEW DIFFERENCES

Be aware of differences in discovery rules in litigating unlawful detainer actions.

Shorter Response Times

a. *Requests for admission and interrogatory responses:* Responses are due 5 days after service unless, on motion of the requesting party, the court shortens the time. CCP §§2030.260, 2033.250.

b. *Demands for inspection:* Demand must specify an inspection time at least 5 days after service; response is due 5 days after service. CCP §§2031.030, 2031.260.

Cutoff

Discovery must be completed on or before the 5th day before trial date. CCP §2024.040(b)(1).

Shorter Notice Period on Discovery Motions

Discovery motions in unlawful detainer actions may be made at any time on giving 5 days' notice. CCP §1170.8.

REQUESTS FOR ADMISSION, INTERROGATORIES, DOCUMENT PRODUCTION

WHEN TO USE

- a. Use requests for admission, interrogatories, or document production to elicit facts to build your case or to learn basis for tenant's affirmative defenses.
- b. You may make request on the earlier of 5 days after service of summons on, or appearance by, tenant. CCP §§2030.020, 2031.020, 2033.020.

Sample Form: For routine unlawful detainers, consider using Form Interrogatories—Unlawful Detainers (Judicial Council Form DISC-003/UD-106), applicable to unlawful detainer proceedings, reprinted in Eviction Defense Man, App FF.

TAKING DEPOSITIONS

WHEN TO USE

- a. The plaintiff may serve a notice of deposition without leave of court any time after 20 days beyond the service of the summons and complaint. CCP §2025.210(b).
- b. In an unlawful detainer action, any party may take a deposition 5 days after notice and up to 5 days before trial (CCP §2025.270(b)), but if there is a deposition subpoena to produce personal records of a consumer or employment records of an employee, the deposition must be scheduled for a date at least 20 days after issuance of the subpoena. The court may shorten or extend time or stay the taking of the deposition. CCP §§2025.270(d), 2025.420.

IF EARLY TRIAL IMPORTANT

- a. Realize that depositions may result in a slight delay to trial, depending on when you serve notice and set the deposition. See CCP §§2025.210, 2025.270.
- b. If the court customarily sets the trial 20 days after you file Request/Counter-Request to Set Case for Trial—Unlawful Detainer (Judicial Council Form UD-150) (reprinted in App H), realize that you may delay trial by delaying the filing of the request.

Further Research: See Landlord-Tenant, chap 11; Eviction Defense Man, chap 23. See also Creating Your Discovery Plan (Cal CEB Action Guide February 2007); Obtaining Discovery: Initiating and Responding to Discovery Procedures (Cal CEB Action Guide March 2007); Handling Motions to Compel and Other Discovery Motions (Cal CEB Action Guide March 2007).

Source: Real Property/Handling Unlawful Detainers (Action Guide)/After Tenant Responds/STEP 29. MOVE FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION OF ISSUES, IF APPROPRIATE

STEP 29. MOVE FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION OF ISSUES, IF APPROPRIATE

WHEN TO USE

- a. Ordinarily, you will not use a summary judgment motion (see CCP §437c). A motion for judgment on the pleadings (by landlord or tenant) or for nonsuit (by tenant) is more common.
- b. If the trial court calendar is backlogged, consider moving for summary judgment or summary adjudication of issues under CCP §§437c and 1170.7:
 - (1) Although you are not required to file a separate statement of undisputed facts in unlawful detainer actions (CCP §437c(r)), you probably should file one to make easier the court's review of your motion; and
 - (2) Your motion may have the effect of discovery by drawing out tenant's defenses.

PROCEDURES

- a. Under CCP §1170.7, only 5 days' notice of motion is required after the answer is filed.
- b. Depending on local hearing schedule or practice, court may or may not calendar motion on 5 days' notice.
- c. Tenant must file and serve opposing papers no later than court day before hearing or may oppose motion orally at hearing under Cal Rules of Ct 3.1351.
- d. When investigation or discovery is incomplete, opposing party may request continuance of motion ex parte under CCP §437c(h)-(i) to obtain evidence that may exist to oppose motion.
- e. Sanctions are available under CCP §437c(j) if any party submits affidavits "in bad faith or solely for purposes of delay."

Further Research: See Making and Opposing a Summary Judgment Motion (Cal CEB Action Guide October 2005); Landlord-Tenant, chap 11; Eviction Defense Man, chap 22.

When Preparing for and Conducting Trial

STEP 30. SERVE NOTICE OF TRIAL

CHECK WITH CLERK

Check that clerk has set trial date and properly notified all parties approximately 10 days after you file Request/Counter-Request to Set Case for Trial—Unlawful Detainer (Judicial Council Form UD-150) (reprinted in [App H](#)).

WHEN TO SERVE

Serve notice of trial at least 5 days before trial date, or 10 days if notice is mailed. [CCP §594](#).

NOTE

Court clerk is directed by [CCP §594](#) to serve notice on all parties, but landlord also should effect service to ensure that proper notice is served.

WHOM TO SERVE

Serve notice on pro per tenant or tenant's counsel.

Further Research: See [Landlord-Tenant, chap 11](#).

Source: Real Property/Handling Unlawful Detainers (Action Guide)/When Preparing for and Conducting Trial/STEP 31.
COMPLETE TRIAL PREPARATION

STEP 31. COMPLETE TRIAL PREPARATION

AMEND COMPLAINT IF LANDLORD ACCEPTS PARTIAL PAYMENT

In *commercial tenancy*, if landlord accepts rent payments from tenant after filing the complaint (CCP §1161.1(c)):

- a. Give notice to tenant that "acceptance of the partial rent payment does not constitute a waiver of any rights," including any right landlord may have to recover possession of the property (CCP §1161.1(c));
- b. Amend complaint to reflect the partial payment, without first obtaining leave of court; and
- c. Proceed without delay.

IDENTIFY WITNESSES

Identify witnesses needed to testify to matters alleged in complaint (*e.g.*, process server regarding service of termination notice).

COMPEL APPEARANCES

Use appropriate device, *e.g.*, subpoena, to compel witnesses' appearance.

Opposing Party

- a. At least 10 days before trial (15 days if notice was mailed), serve notice to appear on opposing counsel or tenant, giving time and place tenant should appear (see CCP §1987(b)); or
- b. If insufficient time for notice, serve trial subpoena (see "Compel Document Production," this step, below).

Sample Form: For Notice to Appear at Trial form, see California Trial Practice: Civil Procedure During Trial §4.69 (3d ed Cal CEB 1995), referred to throughout this Action Guide as Civ Proc During Trial.

Nonparty Witness

Serve subpoena. For discussion of compelling production, see "Compel Document Production," this step, below.

Fees

Include written notice that witness is entitled to both witness and mileage fees. CCP §1987.

ASSEMBLE DOCUMENTARY EVIDENCE

Assemble

Assemble relevant documents you plan to introduce into evidence at trial (*e.g.*, written lease, notices, proofs of service, photographs).

Commercial Lease—Prepare Business Records

Review business records exception to hearsay rule (Evid C §1271), and prepare managing agent as primary witness.

Review Evidentiary Rules

Review evidentiary rules, especially on authentication and proof of content of writing. Evid C §§1400-1401, 1520-1521, 1523.

COMPEL DOCUMENT PRODUCTION

If you need to compel production of documents and other evidence at trial from:

Opposing Party

Opposing party:

- a. You may give written notice 20 days before trial of "exact materials" to be produced (CCP §1987(c)); *but*
- b. Because of expedited trial-setting, serve trial subpoena duces tecum in sufficient time to allow witness "reasonable" time to prepare and travel to court. CCP §§1985, 1987(a).

Nonparty Witness

Nonparty witness:

- a. Have subpoena duces tecum personally served on witness; and
- b. Attach accurate list of documents for witness to bring.

Further Research: See Laying a Foundation to Introduce Evidence (Preparing and Using Evidence at Trial) (Cal CEB Action Guide April 2008), referred to throughout this Action Guide as Laying a Foundation; Handling Subpoenas (Cal CEB Action Guide May 2009); Civil Subpoena for Personal Appearance at Trial or Hearing (Judicial Council Form SUBP-001).

REVIEW TRIAL TESTIMONY

- a. Prepare questions for your prima facie case.
- b. Review them with your witnesses.

ANTICIPATE TENANT'S MOTIONS

Anticipate tenant's motion for judgment:

- a. On the pleadings, before any evidence is presented; and
- b. Under CCP §631.8 (if court trial) or for nonsuit under CCP §581c (if jury trial), after landlord presents evidence. Court may grant motion on some or all issues.

PREPARE MOTIONS IN LIMINE

Prepare appropriate motions in limine if, *e.g.*, tenant asserts ungrounded affirmative defense.

REVIEW JURY INSTRUCTIONS

- a. If a jury will hear the case, ascertain local rules or policies and prepare and file jury instructions and voir dire questions. See Landlord-Tenant, chap 12; Eviction Defense Man, Apps II-JJ.
- b. Review California Civil Jury Instructions (CACI) 4300-4341 (approved by California Judicial Council), which specifically apply to unlawful detainer actions but do not cover all situations.
- c. Review California Civil Jury Instructions VF-4300-VF-4302, which are the general and specific verdict forms for use in unlawful detainer actions.
- d. Review rules regarding use of CACI jury instructions, including those on preparing jury instructions in Cal Rules of Ct 2.1050-2.1058.

Further Research: On preparing for trial generally, including evidence admissibility issues, see Laying a Foundation; California Trial Objections, chaps 1-32 (Cal CEB Annual); Civ Proc During Trial, chaps 2-11, 20.

IF CONSIDERING PRETRIAL DISMISSAL

Before trial, landlord may decide that dismissing unlawful detainer action is the best strategy, allowing landlord to settle, to prepare and serve a new termination notice, or to pursue other resolution.

Civil Code §171Z, governing attorney fees awards, applies to unlawful detainer actions that are based on written contract.

a. If landlord voluntarily dismisses unlawful detainer action based on alleged breach of lease *during* unexpired term (*e.g.*, nonpayment of rent or improper use of premises) or dismisses pursuant to settlement, there is no prevailing party under CC §1717(b)(2). *Mitchell Land & Improvement Co. v Ristorante Ferrantelli, Inc.* (2007) 158 CA4th 479, 70 CR3d 9. Therefore, neither landlord nor tenant would be awarded attorney fees, and only costs would be allowed.

b. However, action for unlawful detainer alleging wrongful possession *after* lease expires is action in tort rather than contract. *Drybread v Chipain Chiropractic Corp.* (2007) 151 CA4th 1063, 60 CR3d 580. Civil Code §1717(b)(2) does not apply to voluntary dismissal of tort action, but if lease permits attorney fee awards in noncontract actions, tenant may be declared prevailing party and awarded attorney fees.

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STEP 32. TRIAL: PRESENT LANDLORD'S CASE

HOW TO PROCEED

Proceed as in any civil trial; plaintiff has burden of proving prima facie case.

Exception

Code of Civil Procedure §1173 allows pleadings to be amended to conform to proof.

Effect: At trial you may prove that there is another ground, which is not alleged in complaint, for the unlawful detainer action.

NOTE

If different facts support new ground for unlawful detainer, motion to amend may be denied (see *North 7th St. Assocs. v Constante* (2001) 92 CA4th Supp 7, 111 CR2d 815).

EVIDENCE

Present evidentiary proof of facts as alleged in complaint, using witness testimony and admissible documents (see step 12, above).
CCP §§1161-1161b.

Further Research: On unlawful detainer trials, see Landlord-Tenant, chap 12.

BURDEN OF PROOF—EVICTION AFTER FORECLOSURE

Review burden of proof described in *Cheney v Trauzettel* (1937) 9 C2d 158, 160, 69 P2d 832 (plaintiff-purchaser must prove its purchase at foreclosure sale that complied with statutory law and deed of trust), discussed in Landlord-Tenant §§8.68-8.68E, 10.54.

BURDEN OF PROOF—COMMERCIAL TENANCY

If landlord's notice estimates rent due (see Eviction Defense Man, chap 19; Landlord-Tenant, chap 8) and expressly identifies rent due as an estimate, then landlord must prove that amount was reasonably estimated. CCP §1161.1(a).

Presumption Affecting Burden of Proof

- a. The amount of rent claimed is presumed reasonably estimated if it is within 20 percent more or less than the amount ultimately found to be due (CCP §1161.1(a)); *however*,
- b. In deciding reasonableness, the court will consider whether:
 - (1) Information for determining rent is primarily within the knowledge of one party; and
 - (2) The knowledgeable party has furnished, or accurately furnished, information to the other party.

Further Research: On estimated rent, see Eviction Defense Man, chap 19; *WDT-Winchester v Nilsson* (1994) 27 CA4th 516, 530, 32 CR2d 511.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/When Preparing for and Conducting Trial/STEP 33.
TRIAL: ANTICIPATE TENANT'S CASE

STEP 33. TRIAL: ANTICIPATE TENANT'S CASE

COMMERCIAL TENANT PAYS OR TENDERS REASONABLE ESTIMATE OF RENT DUE

If commercial tenant receives a notice identifying the amount of rent owed as an estimate, tenant may pay or tender to landlord, within the notice period, the amount tenant reasonably estimates to be due. CCP §1161.1(a).

Result if Tenant Tenders Rent

- a. If the court rules that the rent due was either the amount tendered by tenant or a lesser amount, tenant prevails.
- b. If the court determines that the amount of rent tenant tendered was a reasonable estimate but was, in fact, less than the amount due, tenant retains the right to possession *if* tenant pays to landlord within 5 days after the effective date of the judgment all of the following:
 - (1) The amount previously tendered by tenant, if landlord had not accepted it;
 - (2) The difference between the amount tendered and the amount the court determines is due; and
 - (3) Any other sums ordered by the court.

NOTE

The burden of proof is on tenant to show that the amount of rent tenant paid was a reasonable estimate. CCP §1161.1(a).

Presumption Affecting Burden of Proof

See step 32, above.

NONSUIT

Tenant may move for nonsuit under CCP §581c (if jury trial) or CCP §631.8 (if court trial) if landlord fails to establish *each* element of unlawful detainer.

CONTRAVENTION OF PROOF

Tenant may present evidence that controverts landlord's proof on any issue raised in complaint. In evictions based on nonpayment of rent particularly, tenant may argue that:

- a. back rent is awarded only for period from tenant's last rent payment through expiration of 3-day notice; and
- b. damages for holdover after termination are calculated per diem from notice expiration date through date of judgment.

Further Research: See Landlord-Tenant §§9.38, 12.27-12.30.

RESIDENTIAL BREACH OF WARRANTY OF HABITABILITY

- a. Residential tenant may claim that landlord *substantially* breached implied warranty of habitability or statutory tenantability standards as affirmative defense in action based on nonpayment of rent (see, *e.g.*, CC §§1941-1941.1, 1942.4; CCP §§1174.2, 1174.21; see also step 25, above); or
- b. Residential tenant may assert breach to reduce amount of daily damages for period after 30-day notice expires in action terminating periodic (*e.g.*, month-to-month) tenancy (see *North 7th St. Assocs. v Constante* (2001) 92 CA4th Supp 7, 11 n1, 111 CR2d 815).

Substantial Breach

Tenant must prove that landlord failed to comply with applicable building and housing code standards that *materially* affect health

and safety. CCP §1174.2(c).

If Landlord Prevails

If tenant fails to prove breach, landlord is entitled to judgment for possession and damages, including attorney fees and costs.

If Tenant Prevails

If tenant proves breach:

- a. Court determines "reasonable rental value" of premises in untenable state from date of untenability to date of trial;
- b. Court awards tenant on entry of judgment costs and reasonable attorney fees if provided by statute or contract;
- c. Court allows tenant reasonable period to pay reasonable rental value, not exceeding 5 days from date court makes determination (or 10 days if determination served by mail to California address, 15 days to another state, and 25 days to outside United States (CCP §§1174.2(a), 1013); *and*
- d. Court enters judgment in favor of tenant after tenant pays reasonable rental value; *but*, if tenant fails to pay it:
 - (1) Court enters judgment in favor of landlord for reasonable rental value owing, reasonable attorney fees if provided by statute or contract, costs, and possession; *and*
 - (2) Landlord can obtain writ of possession and evict tenant.

NOTE

If court deems repairs by landlord necessary, court will order that monthly rent be limited to reasonable rental value until repairs are completed (CCP §1174.2(a)(4)) and can order landlord to make repairs (CCP §1174.2(a)(3)).

OTHER AFFIRMATIVE DEFENSES

Tenant may present evidence and prove other available affirmative defenses, *e.g.*, retaliatory eviction (see step 25, above). See Landlord-Tenant, chaps 10, 12, for possible arguments on who has burden of proof when tenant claims retaliatory eviction.

JURY INSTRUCTIONS

See step 31, above. For sample jury instructions, see Eviction Defense Man, App II; Landlord-Tenant, chap 12.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/When Preparing for and Conducting Trial/STEP 34.
REQUEST STATEMENT OF DECISION, IF DESIRED

STEP 34. REQUEST STATEMENT OF DECISION, IF DESIRED

WHEN TO REQUEST

a. Request a statement of decision if:

- (1) You are *not* the prevailing party; and
- (2) You think the prevailing party failed to prove its case.

b. If the trial is less than 8 hours or 1 day, and it is likely that the court will rule against you, then request the statement of decision *before* the matter is submitted. See CCP §632.

WHEN NOT TO REQUEST

If you prevail, requesting the statement will delay obtaining judgment.

Further Research: CCP §632; Cal Rules of Ct 3.1590. See Landlord-Tenant, chap 12; Eviction Defense Man §25.69; Civ Proc During Trial §§24.34-24.50.

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After Court Enters Judgment

STEP 35. PREVAILING LANDLORD OBTAINS AND EXECUTES JUDGMENT

WHAT DECREE INCLUDES

- a. Court judgment usually specifies recovery of both money and possession ([CCP §1174\(a\)-\(b\)](#)), including:
- (1) Prejudgment interest on rent and damages, from time due ([CC §3287\(a\)](#));
 - (2) Costs (see [CCP §1174.2](#); [Strickland v Becks \(1979\) 95 CA3d Supp 18, 20, 157 CR 656](#)); and
 - (3) Attorney fees if provided for by statute or in lease or rental agreement. [CC §1717](#); [CCP §1174.2, 1174.21](#). See [Landlord-Tenant §§13.25-13.33C](#).
- b. Court will not declare forfeiture of lease or rental agreement unless 3-day notice affirmatively showed landlord's intent to declare forfeiture. [CCP §§1161, 1174\(a\)](#). For discussion, see "If Appropriate, Declare Intent to Forfeit," [step 6](#), above.

Prepare Judgment

If court directs you to prepare judgment, do so *immediately* for judge's signature and file it with original proof of service. See [Civ Proc During Trial §§23.28, 23.40](#).

Sample Form: For sample form, see [App K](#). For additional forms, including conditional judgment forms, see [Eviction Defense Man §§26.39-26.42](#), [Apps KK-LL](#); [Landlord-Tenant, chap 13](#).

NOTE

Consider having proposed judgment ready at conclusion of trial, with blanks for inserting amounts.

HAVE JUDGMENT FOR POSSESSION EXECUTED

Because a judgment is not self-executing, you must obtain a writ of possession of real property and have sheriff or Marshal levy it as soon as possible (see "Obtain Writ of Possession," this step, below, and [step 36](#), below, for discussion) *unless* tenant secures stay of execution. See [CCP §1174\(c\)](#). See also [step 40](#), below.

FOLLOW PROCEDURES FOR FIXING COSTS AND ATTORNEY FEES

Most trial courts have cost and attorney fee schedules for unlawful detainer actions so that the amounts are determined before entry of judgment and are included in it. If amount of awarded costs or attorney fees is not expressly stated in the judgment, follow procedure for establishing costs or attorney fees after entry of judgment. See [Landlord-Tenant §§13.23, 13.33-13.33C](#).

CONSIDER INSPECTION OF PREMISES

WHY INSPECTION MAY BE NECESSARY

One court of appeal ruled that because neglected rental property endangers the public, a landlord has a duty to inspect the premises on the entry of judgment for possession in an unlawful detainer action, including reasonable periodic inspections afterward. See [Stone v Center Trust Retail Props., Inc. \(2008\) 163 CA4th 608, 613, 77 CR3d 556](#) (affirming landlord's liability to third party who slipped and fell while defaulting tenant still occupied premises). California Civil Jury Instruction 1006 was amended to reflect the ruling.

obtain WRIT OF POSSESSION

WHEN TO OBTAIN

Obtain the writ of possession as soon as the judgment is signed.

HOW TO PROCEED

a. Prepare:

(1) writ of possession, directing levying officer to remove tenant from the premises; and

(2) writ of execution to satisfy money judgment.

b. File writ of possession or application and writ of possession, as required by court clerk (clerk will complete and issue writ).

c. Include information required by CCP §§712.020 and 715.010.

d. If you had a prejudgment claim of right to possession served, include a statement that the writ applies to all tenants, any subtenants, any named claimants, and any other occupants of the premises. CCP §715.010(b)(7).

Further Research: See Writ of Execution (Judicial Council Form EJ-130), reprinted in App M; Obtaining a Writ of Possession (Cal CEB Action Guide August 2004); and Landlord-Tenant, chap 13. See also Eviction Defense Man §§28.2, 28.4, 28.7.

ENFORCE MONEY JUDGMENT

HOW TO ENFORCE

Enforce money judgment in same manner as any other civil judgment. See CCP §§695.010-709.030.

Further Research: See Landlord-Tenant, chap 13; Eviction Defense Man, chap 28; Enforcing Civil Money Judgments (Cal CEB Action Guide November 2008).

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/After Court Enters Judgment/STEP 36. HAVE WRIT OF POSSESSION LEVIED

STEP 36. HAVE WRIT OF POSSESSION LEVIED

COOPERATE WITH LEVYING OFFICER

- a. Choose a local levying officer, Marshal, or sheriff, who:
 - (1) Covers evictions for the area where the premises are located; and
 - (2) Will act quickly.
- b. Call levying officer to ascertain:
 - (1) Eviction fees (see, *e.g.*, Govt C §26733.5);
 - (2) How many copies of writ or other papers are required;
 - (3) Levying officer's eviction schedule, *e.g.*, all processed in weekly "batches" with cutoff on given day of week.
- c. Prepare *written* instructions for the eviction, including instruction that officer telephone you before going to premises for lockout (second trip out).
- d. Deliver to the levying officer:
 - (1) Writ of possession;
 - (2) Written instructions; and
 - (3) Check for amount of required fees.

OFFICER POSTS NOTICE

Levying officer posts notice.

IF OCCUPIED AFTER 5 DAYS

If premises are still occupied after 5 days, levying officer will restore possession to landlord unless occupant cannot be removed. CCP §715.020(c).

When Occupant Cannot Be Removed

Occupant will be allowed to stay in possession after being served with eviction notice *if* occupant (CCP §715.020(d)):

- a. Was not named in writ;
- b. Occupied the premises on or before the date the unlawful detainer action was filed;
- c. Presents CCP §1174.3 claim of right to possession (see step 37, below); and
- d. Was not served with prejudgment claim of right to possession in accordance with CCP §415.46.

WHEN LEVYING OFFICER TURNS OVER POSSESSION

When officer is ready to turn over possession to landlord, advise landlord that:

- a. Landlord or landlord's agent must be present when levying officer turns over possession of premises;
- b. Locksmith should be present to change locks, if desired, and to advise levying officer (ordinarily done);
- c. Tenant has 15 days after landlord takes possession in which to pay reasonable storage costs to landlord and remove tenant's

personal property before landlord may dispose of it (CCP §715.010(b)(3)); and

d. Landlord must dispose of tenant's personal property in accordance with CCP §1174 or CC §§1980-1991. For discussion, see "Properly Dispose of Tenant's Abandoned Personal Property," step 39, below.

Further Research: On levying writ of possession, see Landlord-Tenant, chap 13.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/After Court Enters Judgment/STEP 37. RESPOND TO OCCUPANT'S CLAIM OF RIGHT TO POSSESSION

STEP 37. RESPOND TO OCCUPANT'S CLAIM OF RIGHT TO POSSESSION

WHO MAY MAKE CLAIM

An occupant may make a claim of right to possession if the occupant:

- a. Was not named in the judgment for possession and occupied the premises on the date the claim was filed (CCP §1174.3(a)); *and*
- b. Was not served with a prejudgment claim of right to possession in accordance with CCP §415.46. See step 15, above.

NOTE

An occupant who has filed a prejudgment claim of right to possession may not file a claim of right to possession at this point. CCP §1174.3. A lender holding a leasehold deed of trust is not entitled to make a claim of right to possession if the lender is not in possession of the premises. See Glendale Fed. Bank v Hadden (1999) 73 CA4th 1150, 87 CR2d 102.

HOW OCCUPANT MAKES CLAIM

Presents Claim and Fees

Occupant makes claim of right to possession by:

- a. Presenting to levying officer or at the office of levying officer:
 - (1) A completed CCP §1174.3 Claim to Right of Possession and Notice of Hearing (but see CCP §715.020(d)); and
 - (2) Identification;
- b. Presenting to the court, within *2 court days* after presentation of the claim to levying officer, a copy of the claim form or receipt, *and* filing fees (or waiver of fees); *and*
- c. Paying to the court, within *2 court days* after presentation of the claim to levying officer, 15 days' rent. Hearing set on 5th day after filing if no rent paid.

Eviction Stopped

Levying officer stops eviction until court rules on validity of claim. For *Arrieta* hearing procedure, see CCP §1174.3(d) (codification of hearing required by Arrieta v Mabon (1982) 31 C3d 381, 182 CR 770).

ARRIETA HEARING

Expect:

- a. Occupant to argue that landlord consented to claimant as subtenant (see Ellingson v Walsh (1940) 15 C2d 673, 675, 104 P2d 507);
- b. Landlord to argue that claimant is an invitee, licensee, guest, or trespasser. If so, occupant's claim is invalid under CCP §1174.3(d).

POTENTIAL RESULTS

- a. If claim is invalid, levying officer proceeds to evict all persons, and any rent posted is returned pro rata to claimant. CCP §1174.3(d), (g).
- b. If claim is *valid*, *breach curable*, and notice not served, landlord must serve notice under CCP §1161. CCP §1174.3(e).
- c. If claim is *valid*, *breach not curable*, and notice not served, court deems complaint amended and it may be served at hearing and,

if breach is not cured, supplemental complaint may be filed and served. CCP §1174.3(e).

NOTE

An occupant not named in a writ of possession issued by a bankruptcy court may be precluded from making a claim of right to possession. See *George v County of San Luis Obispo* (2000) 78 CA4th 1048, 93 CR2d 595.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/After Court Enters Judgment/STEP 38. WHEN JUDGMENT IS FOR TENANT

STEP 38. WHEN JUDGMENT IS FOR TENANT

EFFECT

When judgment is for tenant, tenant:

- a. Retains possession;
- b. Is allowed costs and, *if rental agreement so provides*, attorney fees. CC §1717. See Landlord-Tenant §§13.33-13.33C, 13.40.

IF TENANT PROVES HABITABILITY DEFENSE

If tenant has proved habitability defense, tenant:

- a. Is considered "prevailing party," is allowed attorney fees, and pays reasonable rental value of premises, if any. CCP §1174.2. For discussion of breach of implied warranty of habitability, see step 33, above.
- b. May retain possession if the adjusted rent is paid within 5 days. CCP §1174.2.
- c. Recovers reasonable attorney fees and costs under CCP §1174.21 if tenant proves landlord violated CC §1942.4 (failure to repair dangerous conditions after written governmental notice).

Sample Form: For sample Judgment for Defendant (Breach of Warranty of Habitability), see Landlord-Tenant §13.41.

Further Research: See Landlord-Tenant, chaps 3, 13; Eviction Defense Man, chap 26.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/After Court Enters Judgment/STEP 39. DETERMINE WHICH POSTJUDGMENT ACTIONS ARE APPROPRIATE FOR LANDLORD

STEP 39. DETERMINE WHICH POSTJUDGMENT ACTIONS ARE APPROPRIATE FOR LANDLORD

REVIEW AVAILABLE POSTTRIAL MOTIONS

- a. Proceed with appropriate posttrial motions as in other civil actions. See Civ Proc During Trial, chap 25.
- b. Be aware that the court may stay execution of judgment pending determination of posttrial motions. CCP §§918, 1176.

Further Research: See Landlord-Tenant, chap 13; Eviction Defense Man §§27.1-27.6.

CONSIDER APPEAL

Review CCP §§901-936.1, which govern appeals to the extent consistent with unlawful detainer provisions.

CONSIDER ACTION FOR ADDITIONAL DAMAGES

- a. Consider bringing additional court action under CC §1951.2 for additional damages not recoverable through unlawful detainer action.
- b. Include guarantors in additional action.

Further Research: See Landlord-Tenant, chap 13; Eviction Defense Man, chap 26.

PROPERLY DISPOSE OF TENANT'S ABANDONED PERSONAL PROPERTY

After recovering possession of premises (see step 36, above), review and follow proper procedures for disposing of abandoned personal property (CC §§1980-1991; CCP §1174(e)-(l)), *i.e.*:

- a. Store property in safe place (CCP §1174(g); CC §1986);
- b. Give proper notice of right to reclaim abandoned property to former tenant, if necessary, and owners of property other than tenant (see CCP §1174(f)-(m); CC §§1980-1991; CCP §715.010(b)(3); Landlord-Tenant, chap 8; Eviction Defense Man §28.18 (forms));
- c. Run a Uniform Commercial Code (UCC) check to assure that you give notice to all claiming an interest (see Taking Security Interests in Personal Property (Cal CEB Action Guide June 2007));
- d. Publish notice of sale of abandoned property valued at \$300 or more (CC §1988(a)-(b)); and
- e. Conduct sale and, after deducting for costs of storage and sale, pay proceeds that are not claimed by former tenant (or other owner) to county treasury (or other official designated by county) within 30 days of sale. (CC §1988(c)).

NOTE

When a tenant leaves behind personal property after termination of the tenancy, landlord may dispose of it either as lost property or as abandoned property. See CCP §1174(e); CC §1982. If tenant was evicted by an unlawful detainer action, the procedures in both CCP §1174 and CC §§1980-1991 apply; if tenant vacated voluntarily or abandoned the premises, the procedures are governed solely by CC §§1980-1991. If landlord believes that the property is lost, he or she must deliver it to the local police or sheriff under CC §§2080-2080.9. See CCP §1174(e); CC §1982(a). If they refuse to accept it as lost, which is usual in many counties, landlord may dispose of it under CC §§1980-1991. See CCP §1174(e); CC §1982(b).

Further Research: See Landlord-Tenant, chap 1; Eviction Defense Man §§28.16-28.21.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/After Court Enters Judgment/STEP 40. ANTICIPATE THAT TENANT WILL SEEK POSTJUDGMENT RELIEF

STEP 40. ANTICIPATE THAT TENANT WILL SEEK POSTJUDGMENT RELIEF

MOTIONS

- a. Anticipate posttrial motions from tenant, as in other civil actions.
- b. Tenant may seek 5-day stay of execution of judgment under CCP §1174(c), if the notice was a nonforfeiture notice and unlawful detainer was based on nonpayment of rent.

Sample Form: For sample Ex Parte Application for Stay of Execution, see Landlord-Tenant §13.54; Eviction Defense Man §27.4, Apps MM-PP.

Further Research: See Cal Rules of Ct 3.1200-3.1207, which govern notice and other requirements for ex parte applications. Note that shorter notice, if reasonable, may be used in unlawful detainer actions. Cal Rules of Ct 3.1203(b). See also Landlord-Tenant, chap 13.

RELIEF FROM FORFEITURE

- a. If judgment declares a forfeiture, tenant or "any person interested in the continuance of the term" may seek relief from forfeiture on ground of hardship on 5 days' notice "at any time prior to restoration of the premises" to landlord. CCP §1179. Relief is available whether the basis of tenancy is a lease or a rental agreement and whether the agreement is written or oral.
- b. Party seeking relief must:
 - (1) Prepare verified petition stating grounds for relief; and
 - (2) Serve notice of application and copy of petition on landlord at least 5 days before the hearing.
- c. A tenant appearing without an attorney may make the application orally if landlord is present and has an opportunity to contest or has been given ex parte notice of the hearing and its purpose.
- d. Court may grant relief only on condition that tenant makes full payment of rent due or fully performs other breached covenants.
- e. An eviction based on nuisance involving unlawful weapons or ammunition is subject to relief from forfeiture under CCP §1179. CC §3485(a)(5). (Civil Code §3485 remains in effect only until January 1, 2010, unless a statute deletes or extends that date.)

Sample Form: For sample Application for Relief From Forfeiture and supporting documents, see Landlord-Tenant §§13.55, 13.57; Eviction Defense Man §27.31, App PP.

Further Research: See Landlord-Tenant, chap 13.

NOTE

A lender secured by a leasehold interest that did not protect itself against termination of its interest by a contractual arrangement with landlord is not entitled to relief against forfeiture under CCP §1179 or CC §3275. See Glendale Fed. Bank v Hadden (1999) 73 CA4th 1150, 87 CR2d 102.

APPEAL

- a. Note that tenant cannot automatically stay enforcement of judgment by filing notice of appeal. CCP §1176.
- b. Expect tenant to obtain an ex parte stay of execution of judgment. CCP §918.

Sample Form: For sample form, see Landlord-Tenant §13.62.

Further Research: See Handling Civil Appeals (Cal CEB Action Guide June 2008); Landlord-Tenant, chap 13; Eviction Defense

Man, chap 29; California Civil Appellate Practice (3d ed Cal CEB 1996).

WRIT

If the court does not grant a stay while tenant pursues appeal, tenant may pursue extraordinary writ, usually mandamus, to compel review or stay execution. See CCP §§1084-1097.

Further Research: See Landlord-Tenant, chap 13; Eviction Defense Man, chaps 29-30; Civ App Prac, chap 6.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/After Court Enters Judgment/STEP 41. REFUND SECURITY DEPOSIT AFTER APPROPRIATE DEDUCTIONS AND INTEREST PAYMENTS

STEP 41. REFUND SECURITY DEPOSIT AFTER APPROPRIATE DEDUCTIONS AND INTEREST PAYMENTS

REVIEW SECURITY DEPOSIT LAW

The law on security deposits is contained almost entirely in [CC §§1950.5](#) (residential tenancies) and [1950.7](#) (commercial tenancies). Commercial tenants have fewer protections. For detailed discussion, see [Landlord-Tenant §§4.23-4.29, 8.167-8.175](#).

GIVE NOTICE OF RIGHT TO INSPECTION

For the express purposes of identifying damage caused by residential tenant and giving tenant an opportunity to repair it:

a. Landlord must give tenant an opportunity to request inspection within a reasonable time after either party serves a termination notice (or before a fixed-term lease expires), except 3-day notices served under [CCP §1161\(2\)-\(4\)](#). [CC §1950.5\(f\)](#). See [steps 8-9](#), above.

b. If tenant requests inspection before vacating the premises, landlord must conduct the inspection and serve a preliminary itemized statement:

(1) Identifying what needs to be fixed and the amount for each item landlord intends to deduct from the security deposit; and

(2) Including the text of [CC §1950.5\(b\)\(1\)-\(4\)](#). [CC §1950.5\(f\)](#).

CALCULATE DEDUCTIONS AND ADDITIONS AND REFUND BALANCE

a. Whether or not tenant requested a pretermination inspection, within 3 weeks after tenant moves out, landlord must return all amounts not necessary to remedy tenant defaults with an itemized statement of the security received and its disposition, including copies of receipts or other documents showing amounts expended to repair or clean the unit. [CC §1950.5\(g\)](#).

b. An itemized statement of the disposition of the deposit on termination of landlord's interest in the dwelling unit is required. [CC §1950.5\(h\)-\(i\)](#).

c. Penalties are imposed on landlords who retain the deposit in bad faith. [CC §1950.5\(l\)](#).

d. Before refunding security deposit, landlord should check to see if local rent control laws require the payment of interest on tenant's security deposit. See [Small Prop. Owners v City of San Francisco \(2006\) 141 CA4th 1388, 47 CR3d 121](#).

NOTE

Under [CC §1950.7](#), commercial landlords have fewer obligations, *e.g.*, the definition of a security deposit is much less comprehensive, no ceiling is set on the amount of security deposit collected, and an itemized statement of disposition of the deposit is not required. Landlord has between 2 weeks and 30 days to refund the unused balance of the deposit, depending on how the deposit was applied.

Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX A Sample Notice of Belief of Abandonment

APPENDIX A

Sample Notice of Belief of Abandonment

For how to proceed, see discussion of establishing abandonment, step 1, above.

NOTICE OF BELIEF OF ABANDONMENT

By Certified Mail/Return Receipt

Requested and First-Class Mail,

Postage Prepaid

[Send certified if notice clause in lease requires.]

To: John Tenant

818 Main Street, Unit A

Los Angeles, CA 91113

This Notice is given under California Civil Code §1951.3, concerning the real property leased by you commonly known as 818 Main Street, Unit A, Los Angeles, California. The rent on this property is due and unpaid for more than fourteen (14) consecutive days and the Landlord believes that you have abandoned the property.

The real property will be deemed abandoned within the meaning of California Civil Code §1951.2, and your lease will terminate on __*[insert date that is 15 days after notice is personally served or 18 days after notice is mailed; if that date is a Saturday, Sunday, or holiday, then insert following business day]*__ unless before that date the undersigned receives at the address indicated below a written notice from you stating both of the following:

1. Your intent not to abandon the property;
2. An address at which you may be served by certified mail in any action for unlawful detainer of the real property.

You are required to pay the rent due and unpaid on this real property as required by the lease, and your failure to do so can lead to a court proceeding against you.

Date: _____

ABC Landlord

By: David M. Gurewitz

Attorney for ABC Landlord,

__*[Address and phone number of attorney]*__

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX B Sample Notice to Pay Rent or Quit (Forfeiture--Noncommercial; Nonforfeiture--Noncommercial; Forfeiture--Commercial Estimated Rent; and Nonforfeiture--Commercial Estimated Rent)

APPENDIX B

Sample Notice to Pay Rent or Quit

(Forfeiture—Noncommercial; Nonforfeiture—Noncommercial; Forfeiture—Commercial Estimated Rent; and Nonforfeiture—Commercial Estimated Rent)

For how to proceed, see discussion of notice to pay or quit, step 6, above.

NOTICE TO PAY RENT OR QUIT

Forfeiture

Noncommercial

To: __[Name(s) of Tenant(s)]__

And All Other Occupants-in-Possession

NOTICE IS HEREBY GIVEN that under the terms of that Lease dated __[date]__, by which you hold possession of the premises commonly known as __[street address]__, there is now due unpaid rent for these premises in the sum of \$ __[amount]__ as follows:

[Specify month and year for which rent is unpaid]

__[November 2009]__

\$ __[1000.00]__

__[December 2009]__

__[1000.00]__

TOTAL RENT

\$ __[2000.00]__

WITHIN THREE (3) DAYS after service on you of this notice, you are hereby required to pay the rent in full or to deliver possession of said premises to the undersigned at __[address]__. Payment shall be made to __[specify name, telephone number, and address of person to whom rent payment shall be made and, if payment may be made personally, the usual days and hours that person will be available to receive payment; see step 6, above]__.

If you fail to either pay the rent in full or deliver possession of the premises, the Landlord will institute legal proceedings against you to recover possession of the premises with All Rents Due and Damages (including statutory damages).

The Landlord elects at this time to declare a forfeiture of the tenancy under which you occupy said premises if you fail to pay the rent in full by the date specified in this notice.

Date: _____

ABC LANDLORD, Landlord

By: _____

Its: _____

NOTICE TO PAY RENT OR QUIT

Nonforfeiture

Noncommercial

To: __[Name(s) of Tenant(s)]__

And All Other Tenants-in-Possession

NOTICE IS HEREBY GIVEN that under the terms of that Lease dated __[date]__, by which you hold possession of the premises commonly known as __[street address]__, there is now due unpaid rent for said premises in the sum of \$ __[amount]__ as follows:

[Specify month and year for which rent is unpaid]

__ [November 2009] __
__ [December 2009] __
TOTAL RENT

\$ __ [1000.00] __
__ [1000.00] __
\$ __ [2000.00] __

WITHIN THREE (3) days after service on you of this notice, you are hereby required to either pay the rent demanded above in full or deliver possession of these premises to the undersigned at __ [address] __. Payment shall be made to __ [specify name, telephone number, and address of person to whom rent payment shall be made and, if payment may be made personally, the usual days and hours that person will be available to receive payment; see step 6, above] __.

If you fail to either pay the rent in full or deliver possession of the premises, the Landlord will institute legal proceedings against you to recover possession of the premises with All Rents Due and Damages (including statutory damages).

The Landlord does not elect at this time to declare a forfeiture of the tenancy under which you occupy the premises, but shall hold you responsible for all amounts due and to become due under your lease of the premises.

Date: _____

ABC LANDLORD, Landlord

By: _____

Its: _____

NOTICE TO PAY RENT OR QUIT

Forfeiture

Commercial Estimated Rent

TO: John Tenant, an individual,

And All Other Occupants-in-Possession

NOTICE IS HEREBY GIVEN that under the terms of that Lease dated __ [date] __, by which you hold possession of the premises commonly known as __ [818 Main Street, Unit A, Los Angeles, California] __, there is now due unpaid rent for said premises in the reasonably estimated sum of \$ __ [estimated amount] __ as follows:

[Specify month and year for which rent is unpaid]

__ [November 2009] __
__ [December 2009] __

TOTAL REASONABLY ESTIMATED RENT

\$ __ [2000.00] __
__ [2000.00] __
\$ __ [4000.00] __

WITHIN THREE (3) days after service on you of this notice, you are hereby required to either pay the rent demanded above in full or deliver possession of the premises to the undersigned at __ [100 Maple Street, Los Angeles, California] __. Payment shall be made to __ [specify name, telephone number, and address of person to whom rent payment shall be made and, if payment may be made personally, the usual days and hours that person will be available to receive payment; see step 6, above] __.

If you fail to either pay the rent in full or deliver possession of the premises, the Landlord will institute legal proceedings against you to recover possession of the premises with All Rents Due and Damages (including statutory damages).

The Landlord elects at this time to declare a forfeiture of the Lease under which you occupy said premises if you fail to pay the rent in full by the date specified in this notice.

FURTHER NOTICE IS GIVEN that, if any partial payments of the rent now due and owing are tendered and accepted by the Landlord, acceptance shall be without a waiver of any of Landlord's rights, including the right to recover possession of the premises described above.

Date: _____

ABC LANDLORD, Landlord

By: _____

Its: _____

NOTICE TO PAY RENT OR QUIT

Nonforfeiture

Commercial Estimated Rent

TO: John Tenant, an individual

And All Other Occupants-in-Possession

NOTICE IS HEREBY GIVEN that under the terms of that Lease dated __[date]__, by which you hold possession of the premises commonly known as __[818 Main Street, Unit A, Los Angeles, California]__, there is now due unpaid rent for these premises in the reasonably estimated sum of \$ __[estimated amount]__ as follows:

[Specify month and year for which rent is unpaid]

| | |
|--|-------------------------|
| __[November 2009]__ | \$ __[2000.00]__ |
| __[December 2009]__ | __[2000.00]__ |
| TOTAL REASONABLY ESTIMATED RENT | \$ __[4000.00]__ |

WITHIN THREE (3) days after service on you of this notice, you are hereby required to either pay the rent demanded above in full or deliver possession of the premises to the undersigned at __[100 Maple Street, Los Angeles, California]__. Payment shall be made to __[specify name, telephone number, and address of person to whom rent payment shall be made and, if payment may be made personally, the usual days and hours that person will be available to receive payment; see step 6, above]__.

If you fail to either pay the rent in full or deliver possession of the premises, the Landlord will institute legal proceedings against you to recover possession of said premises with All Rents Due and Damages (including statutory damages).

The Landlord does not elect at this time to declare a forfeiture of the tenancy under which you occupy the premises, but shall hold you responsible for all amounts due and to become due under your lease of the premises.

FURTHER NOTICE IS GIVEN that, if any partial payments of the rent now due and owing are tendered and accepted by the Landlord, acceptance shall be without a waiver of any of Landlord's rights, including the right to recover possession of the premises described above.

Date: _____

ABC LANDLORD, Landlord

By: _____

Its: _____

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX C Sample Notice to Perform Covenant or Quit

APPENDIX C

Sample Notice to Perform Covenant or Quit

For how to proceed, see discussion of notice to cure or quit, step 6, above.

NOTICE TO PERFORM COVENANT OR QUIT

To: John Tenant, an individual

And All Other Occupants-in-Possession

NOTICE IS HEREBY GIVEN that paragraph(s) [e.g., 4] at page(s) [e.g., 6] of the Lease dated [date] , under which you hold possession of the premises described below, requires performance on your part of the following covenant or agreement that you have failed to perform:

 [List items or promises, e.g., provide evidence of insurance to Landlord]

WITHIN [e.g., 5] days after service on you of this Notice, you are hereby required to perform that covenant or agreement or to quit and deliver possession of the premises to the undersigned at [100 Maple Street, Los Angeles, California] ; otherwise, Landlord will institute legal proceeding against you to recover possession of the premises with All Rents Due and Damages (including statutory damages).

The premises referred to in this notice are in the City of [Los Angeles] , County of [Los Angeles] , State of California, and designated by number and street as [818 Main Street, Unit A] .

Date: - - - - -

ABC LANDLORD, Landlord

By: _____

Its: _____

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX D Sample Notice to Quit--Breach of Covenant

APPENDIX D

Sample Notice to Quit—Breach of Covenant

For how to proceed, see discussion of notice to cure or quit, step 6, above.

NOTICE TO QUIT—BREACH OF COVENANT

To: John Tenant, an individual

And All Other Occupants-in-Possession

NOTICE IS HEREBY GIVEN that within __[*e.g., 5*]__ days after service on you of this Notice, you are required to quit and deliver possession of the premises described below to the undersigned at __[*100 Maple Street, Los Angeles, California*]__; otherwise, Landlord will institute legal proceedings against you to recover possession of the premises with All Rents Due and Damages (including statutory damages).

You are being served with this Notice because you have breached a covenant in your Lease dated __[*date*]__, which is not curable, in that you have, contrary to that Lease, done or omitted to do the following:

__[*List breach, e.g., failed to obtain Landlord's consent to sublease premises*]__

The premises referred to are in the City of __[*Los Angeles*]__, County of __[*Los Angeles*]__, State of California, designated by the number and street as __[*818 Main Street, Unit A*]__.

Date: _____

ABC LANDLORD, Landlord

By: _____

Its: _____

NOTE: You must also name any subtenant in Notice.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX E Sample 30-Day/60-Day Notice to Terminate Tenancy

APPENDIX E

Sample 30-Day/60-Day Notice to Terminate Tenancy

For how to proceed and what to include, see discussion, step 8, above.

30-DAY (OR 60-DAY) NOTICE TO TERMINATE TENANCY

To: John Tenant, an individual

And All Other Occupants-in-Possession

TAKE NOTICE that your month-to-month tenancy of the premises described below is hereby terminated as of the date __[50/60]__ days after the service of this NOTICE on you and that you are hereby required to quit and surrender possession of the premises to the undersigned on or before the date __[50/60]__ days after the service of this NOTICE on you.

The premises you are required to surrender are commonly known as __[818 Main Street, Unit A, Los Angeles, California]__.

This NOTICE is intended as a __[50/60]__-day legal notice for the purpose of terminating your tenancy in accordance with California Civil Code §1946 or §1946.1.

Date: _____

ABC LANDLORD, Landlord

By: _____

Its: _____

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX F Complaint--Unlawful Detainer (Judicial Council Form UD-100)

APPENDIX F
Complaint—Unlawful Detainer (Judicial Council Form UD-100)

For how to proceed, see discussion under "Local Rent and Eviction Control Ordinances," [step 2](#), above; see also discussions of choosing form and verification, [step 12](#), above. This form may not be used in evictions following sale or foreclosure under [CCP §§1161a-1161b](#).



| | |
|-------------------|--------------|
| PLAINTIFF (Name): | CASE NUMBER: |
| DEFENDANT (Name): | |

6. c. The defendants not named in item 6a are
- (1) subtenants.
- (2) assignees.
- (3) other (specify):
- d. The agreement was later changed as follows (specify):
- 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):

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): _____ 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): _____
- (2) by leaving a copy with (name or description): _____ 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): _____ 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.

| | |
|-------------------|--------------|
| PLAINTIFF (Name): | CASE NUMBER: |
| DEFENDANT (Name): | |

- 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 \$
- 11. The fair rental value of the premises is \$ _____ 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):

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.
- b. costs incurred in this proceeding:
- c. past-due rent of \$ _____
- d. reasonable attorney fees.
- e. forfeiture of the agreement.
- f. damages at the rate stated in item 11 from (date): _____ for each day that defendants remain in possession through entry of judgment.
- g. statutory damages up to \$600 for the conduct alleged in item 12.
- h. other (specify): _____

18. Number of pages attached (specify): _____

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:
- b. Street address, city, and zip code:
- c. Telephone No.:
- d. County of registration:
- e. Registration No.:
- f. Expires on (date):

Date: _____

(TYPE OR PRINT NAME)

(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: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF)

Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX G Sample Complaint for Unlawful Detainer (Attorney Drafted)

APPENDIX G
Sample Complaint for Unlawful Detainer (Attorney Drafted)

For how to proceed, see discussion of choosing form, step 12, above.

David M. Gurewitz (State Bar No. 76641)

4108-A Highland Ave.

Manhattan Beach, CA 90266

(310) 545-5696

Attorney for Plaintiff ABC Landlord

SUPERIOR COURT OF CALIFORNIA
COUNTY OF __[LOS ANGELES]__
__[LIMITED CIVIL CASE]__

ABC LANDLORD, a California corporation,) No. _____

Plaintiff)

) COMPLAINT FOR UNLAWFUL

vs) DETAINER

JOHN TENANT, an individual and DOES 1)

through 20, inclusive,)

Defendant(s))

Plaintiff alleges:

1. Plaintiff __[ABC Landlord]__ ("Plaintiff") is, and at all times relevant to this Complaint was, a corporation duly organized and existing under and by virtue of the laws of the State of __[California]__ and doing business in the County of __[Los Angeles]__, State of __[California]__.

2. Plaintiff is informed and believes and on that basis alleges that at all times relevant to this Complaint, Defendant __[John Tenant]__ was an individual doing business in the County of __[Los Angeles]__, __[California]__.

3. Plaintiff is the Landlord of the improved commercial real property, possession of which is sought in this action, which is located at __[818 Main Street, Unit A, Los Angeles]__, County of __[Los Angeles]__, State of __[California]__ ("Premises").

4. The true names and capacities of __[DOES 1 through 20, inclusive]__, whether individual, corporate, associate, or otherwise, are at this time unknown to Plaintiff, who therefore sues said Defendants by such fictitious names, and when the true names and capacities of such Defendants are ascertained, Plaintiff will ask leave of Court to amend this Complaint to insert the same.

5. Plaintiff is informed and believes and on that basis alleges that each Defendant named in this Complaint is, and at all times relevant to this Complaint was, the agent and employee of each other Defendant named in this complaint, and was at all times acting within the course and scope of such agency and employment.

6. The obligation that is the subject of this action is commercial in nature and is not subject to California Civil Code §1812.10 or §2984.4. Plaintiff alleges that the obligation sued on in this Complaint was incurred and agreed to be performed in the County of __[Los Angeles]__, State of __[California]__.

7. On or about _ [e.g., January 1, 2010]_, Plaintiff leased to Defendants, in writing, the Premises, for a _ [e.g., two (2)]_ -year term commencing _ [e.g., February 1, 2010]_, and ending on _ [e.g., January 31, 2012]_. Attached to this Complaint as Exhibit 1 and incorporated by this reference is a true and correct copy of the written lease agreement ("Lease").

8. Defendants entered into possession of the Premises under the Lease and continue to occupy the Premises.

9. In consideration for the use of the Premises, Defendants agreed to pay Plaintiff monthly rent at the initial rate of \$ _ [5000.00]_ per month commencing _ [February 1, 2010]_.

10. On or about _ [November 1, 2010]_, Defendants failed to pay Plaintiff _ [November 2010]_ rent in the sum of \$ _ [5000.00]_. On or about _ [December 1, 2010]_, Defendants failed to pay Plaintiff _ [December 2010]_ rent in the sum of \$ _ [5000.00]_.

11. On _ [December 11, 2010]_, Plaintiff caused to be served on Defendants a written Three (3)-Day Notice to Pay Rent or Quit ("Notice"), stating the amount of rent due and requiring Defendants to pay all rents due or deliver possession of the Premises within three (3) days after service of Notice. Service of Notice was accomplished by _ [describe the method of service actually used as provided in CCP §1162]_. A true and correct copy of said Three (3)-Day Notice to Pay Rent or Quit and proof of service thereof are attached to this Complaint collectively as Exhibit 2 and incorporated by this reference.

12. More than three (3) days have elapsed since service of Notice, and Defendants have failed to pay the rent or any part of it, or to deliver possession of the Premises. Therefore, Plaintiff is entitled to immediate possession of the Premises.

13. Defendants unlawfully and without just cause and without Plaintiff's permission or consent hold over and continue in possession of the Premises after default in the payment of rent due under the Lease, and after said demand refuse to deliver possession of the premises to Plaintiff. Plaintiff is informed and believes and, on the basis of this information and belief, alleges that Defendants' continuance of possession is willful, malicious, intentional, deliberate, and obstinate, thus entitling Plaintiff to statutory damages.

14. The reasonable rental value of the Premises is \$ _ [100.00]_ per day, and damages to Plaintiff caused by Defendants' unlawful detention will accrue at that rate after _ [December 14, 2010, _ [the first business day after expiration of the Three (3)-Day Notice]]_ and will continue to accrue at that rate as long as Defendant remains in possession of the Premises.

15. The Lease provides, in part, that if Plaintiff brings suit against Defendants to enforce any provision of the Lease or any of Landlord's rights under the Lease, Defendants will pay Plaintiff's reasonable attorney fees and expenses. Plaintiff has retained the Law Offices of David M. Gurewitz, Attorney at Law, to prepare and prosecute this action.

16. In accordance with paragraph _ [e.g., 10]_ of the written Lease, Plaintiff seeks payment of interest at the maximum rate then allowed by law on past due obligations from the date due.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For restitution of the Premises;
2. For unpaid rent in the sum of \$ _ [6000.00]_, as of _ [December 1, 2010]_;
3. For damages at the rate of \$ _ [100.00]_ per day for each day after _ [December 14, 2010]_, that Defendants, and each of them, continue in possession;
4. For statutory damages according to proof;
5. For interest after the date rent and damages became due at the maximum rate of interest allowed by law;
6. For reasonable attorney fees;
7. For all costs of suit incurred; and
8. For such other and further relief as the Court may deem just and proper.

Date: _ _ _ _ _

David M. Gurewitz

Attorney for Plaintiff

NOTE: Pray for forfeiture of the lease if the notice elected forfeiture.

VERIFICATION

I, _ _[Arthur B. Owner]_ _ , declare as follows:

I am an Officer of Plaintiff _ _[ABC Landlord, a California corporation]_ _ , a party to this action, and am authorized to make this verification for that reason. In this capacity, I have personal knowledge of the actions taken regarding that certain improved real property located at _ _[818 Main Street, Unit A, Los Angeles]_ _ , County of _ _[Los Angeles]_ _ , State of _ _[California]_ _ . I have read the foregoing Complaint for Unlawful Detainer and know its contents. I certify that the same is true from my own knowledge in the capacity described above, except for those matters stated on information and belief, and regarding those matters I believe it to be true.

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

Executed on this _ _[e.g., 18th]_ _ day of _ _[December 2010]_ _ at _ _[Los Angeles, California]_ _ .

__[Signature]__

_ _[Arthur B. Owner]_ _
Declarant

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APPENDIX H

Request/Counter-Request to Set Case for Trial—Unlawful Detainer (Judicial Council Form UD-150)



UD-150

| | |
|---|---------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX No. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____ | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____ | |
| PLAINTIFF: _____ DEFENDANT: _____ | |
| <input type="checkbox"/> REQUEST <input type="checkbox"/> COUNTER-REQUEST TO SET CASE FOR TRIAL—UNLAWFUL DETAINER <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant | CASE NUMBER: _____ |

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*):
 - 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*): _____
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: _____ | c. Telephone no.: _____ |
| b. Street address, city, and zip code: _____ | d. County of registration: _____ |
| | e. Registration no.: _____ |
| | f. Expires on (<i>date</i>): _____ |

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 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: _____ | CASE NUMBER: |
| DEFENDANT: _____ | |

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):

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:

(2) Place mailed (city and state):

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 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. | | |
| 5. | | |
| 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.

| | |
|--|--------------|
| PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: | CASE NUMBER: |
|--|--------------|

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:
- b. Street address, city, and zip code:
- c. Telephone no.:
- 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):

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:

| | |
|----------------------|--------------------------|
| | |
| (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:

| | |
|----------------------|--------------------------|
| | |
| (TYPE OR PRINT NAME) | (SIGNATURE OF DECLARANT) |

Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX J Declaration for Default Judgment by Court (Judicial Council Form UD-116) and Sample Declaration Supporting Default Judgment (Attorney Prepared)

APPENDIX J

Declaration for Default Judgment by Court (Judicial Council Form UD-116) and Sample Declaration Supporting Default Judgment (Attorney Prepared)

For how to proceed, see discussion of expediting premises recovery, [step 16](#), above.



| | |
|-------------------|--------------|
| PLAINTIFF (Name): | CASE NUMBER: |
| DEFENDANT (Name): | |

6. Notice to quit.

- a. Defendant was served with a
 - (1) 3-day notice to pay rent or quit
 - (2) 3-day notice to perform covenants or quit
 - (3) Other (specify):
 - (4) 3-day notice to quit
 - (5) 30-day notice to quit
 - (6) 60-day notice to quit
- b. The 3-day notice to pay rent or quit demanded rent due in the amount of (specify): \$ _____ for the rental period beginning on (date) _____ and ending on (date) _____
- c. The total rent demanded in the 3-day notice under item 6b is different from the agreed rent in item 4a(2) (specify history of dates covered by the 3-day notice and any partial payments received to arrive at the balance) on Attachment 6c (form MC-025).
- d. The original or copy of the notice specified in item 6a is attached to (specify): the original complaint. this declaration, labeled Exhibit 6d. (The original or a copy of the notice MUST be attached to this declaration if not attached to the original complaint.)

7. Service of notice.

- a. The notice was served on defendant (name each):
 - (1) personally on (date):
 - (2) by substituted service, including a copy mailed to the defendant, on (date):
 - (3) by posting and mailing on (date mailed):
- b. A prejudgment claim of right to possession was served on the occupants pursuant to Code of Civil Procedure section 415.46.

8. Proof of service of notice. The original or copy of the proof of service of the notice in item 6a is attached to (specify):

- a. the original complaint.
- b. this declaration, labeled Exhibit 8b. (The original or copy of the proof of service MUST be attached to this declaration if not attached to the original complaint.)

9. Notice expired. On (date): _____ the notice in item 6 expired at the end of the day and defendant failed to comply with the requirements of the notice by that date. No money has been received and accepted after the notice expired.

10. The fair rental value of the property is \$ _____ per day, calculated as follows:

- a. (rent per month) x (0.03288) (12 months divided by 365 days)
- b. rent per month divided by 30
- c. other valuation (specify):

11. Possession. The defendant

- a. vacated the premises on (date):
- b. continues to occupy the property on (date of this declaration):

12. Holdover damages. Declarant has calculated the holdover damages as follows:

- a. Damages demanded in the complaint began on (date):
- b. Damages accrued through (date specified in item 11):
- c. Number of days that damages accrued (count days using the dates in items 12a and 12b):
- d. Total holdover damages ((daily rental value in item 10) x (number of days in item 12c)): \$

13. Reasonable attorney fees are authorized in the lease or rental agreement pursuant to paragraph (specify): _____ and reasonable attorney fees for plaintiff's attorney (name): _____ are \$ _____

14. Court costs in this case, including the filing fee, are \$ _____

| | |
|-------------------|--------------|
| PLAINTIFF (Name): | CASE NUMBER: |
| DEFENDANT (Name): | |

15. Declarant requests a judgment on behalf of plaintiff for:
 a. A money judgment as follows:

| | |
|--|---------|
| (1) <input type="checkbox"/> Past-due rent (item 6b) | \$ |
| (2) <input type="checkbox"/> Holdover damages (item 12d) | \$ |
| (3) <input type="checkbox"/> Attorney fees (item 13)* | \$ |
| (4) <input type="checkbox"/> Costs (item 14) | \$ |
| (5) <input type="checkbox"/> Other (specify): | \$ |
| (6) TOTAL JUDGMENT | \$ 0.00 |

* Attorney fees are to be paid by (name) only.

- b. Possession of the premises in item 2 (check only if a clerk's judgment for possession was **not** entered).
 c. Cancellation of the rental agreement. Forfeiture of the lease.

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)

Summary of Exhibits

16. Exhibit 4b: Original rental agreement.
 17. Exhibit 4c: Copy of rental agreement with declaration and order to admit the copy.
 18. Exhibit 5d: Copy of notice of change in terms.
 19. Exhibit 5e: Original agreement for change of terms.
 20. Exhibit 5f: Copy of agreement for change in terms with declaration and order to admit copy.
 21. Exhibit 6d: Original or copy of the notice to quit under item 6a (MUST be attached to this declaration if it is not attached to original complaint).
 22. Exhibit 8b: Original or copy of proof of service of notice in item 6a (MUST be attached to this declaration if it is not attached to original complaint).
 23. Other exhibits (specify number and describe):

David M. Gurewitz (State Bar No. 76641)

4108-A Highland Ave.

Manhattan Beach, CA 90266

(310) 545-5696

Attorney for Plaintiff ABC Landlord

SUPERIOR COURT OF CALIFORNIA
COUNTY OF *[LOS ANGELES]*
 [LIMITED CIVIL CASE]

ABC LANDLORD, a California corporation,) No.

) Plaintiff

) DECLARATION IN SUPPORT OF

vs) PLAINTIFF'S APPLICATION FOR

) ENTRY OF MONEY JUDGMENT

JOHN TENANT,) (CCP §585(d))

) Defendant

_____)

I, Mary Manager, declare:

1. I am a Vice-President of Unique Management Company, a California corporation, Managing Agent for ABC Landlord, a California corporation ("Plaintiff"). I have been an officer of Unique Management Company for 5 years.

2. In this position, I have personal knowledge of the facts in this Declaration and if called on as a witness in this matter, I could and would competently testify to those facts. In addition to my personal knowledge about this matter, I am also authorized Custodian of Records for Plaintiff's Agent, which records are kept under my direct supervision and control. If called on to testify under oath in this action about the matters set forth in this Declaration, with respect to that certain improved real property commonly known as 818 Main Street, Unit A, Los Angeles, California ("Subject Premises"), I could and would competently testify to those matters as Custodian of Records or from my own personal knowledge.

3. Plaintiff's Agent keeps and maintains files, in the usual and ordinary course of business, concerning the transactions and actions in this matter. The entries in those records are made on or about the time of the transaction, and under my direction.

4. This Declaration has been prepared in support of Plaintiff's Application for Entry of Default Judgment for Money in this action under Code of Civil Procedure §585(d).

5. Plaintiff is the owner of the Subject Premises.

6. On January 1, 2010, Plaintiff leased to Defendant John Tenant ("Defendant") the Subject Premises for a one (1)-year term commencing January 1, 2010, and ending December 31, 2010. A true and correct copy of that lease agreement is attached hereto as Exhibit 1, and is incorporated by this reference. I witnessed Defendant sign the lease agreement.

7. Defendant took possession of the subject premises on or about February 1, 2010.

8. On November 1, 2010, \$10,000 became due from Defendant to Plaintiff for the balance of rent for the Subject Premises for the month of November 2010. Defendant failed to pay any of that rent due and further failed to pay rent for the month of December 2010, in the sum of \$10,000. The sum of \$10,000 became due on December 1, 2010. As of December 1, 2010, there was past due and owing rent, as adjusted, of \$20,000.

9. On December 11, 2010, Plaintiff served on Defendant, by personal delivery to Defendant, a written Three (3)-Day Notice to

Pay Rent or Quit ("Notice"), requesting Defendant to pay the sum of \$20,000 for past due rent or quit and deliver possession of the premises. A true and correct copy of the Three (3)-Day Notice to Pay Rent or Quit is attached hereto as Exhibit 2, and is incorporated by this reference.

10. Defendant failed to respond to the Notice (Exhibit 2), precipitating the instant action.

11. On December 18, 2010, Plaintiff caused to be filed in the above-captioned court a Complaint for Unlawful Detainer against Defendant. Thereafter, Defendant was served with the Complaint for Unlawful Detainer by substituted personal service. A true and correct copy of the Proof of Service is attached as Exhibit 3, and is incorporated by this reference.

12. More than five (5) days elapsed after Defendant was served with the Summons and Complaint for Unlawful Detainer, and Defendant did not appear or respond to the Complaint.

13. On December 29, 2010, the Los Angeles County Superior Court entered Default Judgment for restitution and possession of the subject premises.

14. On January 12, 2011, the Los Angeles County Sheriff levied the Writ of Execution for Possession by placing Plaintiff in peaceful possession of the premises.

15. As of January 12, 2011, Defendant owed Plaintiff \$20,000, representing rent for November 1, 2010, through and including December 14, 2010, and damages at a daily rate of \$333.33 from December 15, 2010, through and including January 12, 2011, of \$9666.57.

16. The lease agreement (Exhibit 1) provides in paragraph 20 that Plaintiff is entitled to collect interest on each such rental payment at the rate of ten percent (10%) per annum from the date due until payment thereof. Therefore, Plaintiff requests an interest award, as follows:

| Payment Due | | | No. of Days' Interest | Interest | Total |
|-------------|------------|--------------|-----------------------|----------|----------|
| | Amount Due | Interest Due | Through 1/15/2011 | Per Day | Interest |
| 11/1/10 | \$10,000 | 11/1/10 | 76 | \$8.13 | \$617.88 |
| 12/1/10 | 10,000 | 12/1/10 | 46 | \$8.13 | \$373.98 |

Interest will continue to accrue after January 15, 2011, until date of Judgment on the principal sum of \$29,666.57 at the rate of \$8.13 per day.

17. Additionally, Plaintiff is entitled to recover attorney fees and costs as more particularly set forth in the attached Declaration of Plaintiff's attorney.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 15th day of January 2011 at Los Angeles, California.

Mary Manager, Declarant

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX K Sample Judgment for Possession (Superior Court)--After Court Trial

APPENDIX K
Sample Judgment for Possession (Superior Court)—After Court Trial

For how to proceed and what to include in judgment, see [step 35](#), above. Other preprinted forms are available. See, *e.g.*, Judgment—Unlawful Detainer (Judicial Council Form UD-110) and Judgment—Unlawful Detainer Attachment (Judicial Council Form UD-110S).

David M. Gurewitz (State Bar No. 76641)

4108-A Highland Ave.

Manhattan Beach, CA 90266

(310) 545-5696

Attorney for Plaintiff ABC Landlord

SUPERIOR COURT OF CALIFORNIA
COUNTY OF __[LOS ANGELES]__
__[LIMITED CIVIL CASE]__

ABC LANDLORD, a California corporation,) No. _____

Plaintiff)

) JUDGMENT BY COURT AFTER

vs) TRIAL

) JOHN TENANT,)

Defendant)

_____)

This cause came on regularly for trial on January 12, 2011, in Division A of the above-titled court, the Honorable John Smith, Judge, presiding, sitting without a jury, a jury having been duly waived. Plaintiff appeared by its attorney David M. Gurewitz and defendant appeared by his attorney John Defense. Evidence, both oral and documentary, having been presented by both parties, and the cause having been argued and submitted for decision,

IT IS ORDERED AND ADJUDGED that:

1. Plaintiff have and recover from defendant possession of the premises 818 Main Street, Unit A, Los Angeles, Los Angeles County, California;
2. Plaintiff have and recover from defendant the unpaid rent due in the total sum of \$20,000, interest on the unpaid rent in the sum of \$991.59, and damages caused to plaintiff by defendant's unlawful detention of the property in the amount of \$9666.57, for a total sum of \$30,658.16, rent and damages, together with attorney fees of \$2500 and costs incurred in this action of \$250.

IT IS FURTHER ORDERED AND DECLARED that the lease under which the property was held by defendant is forfeited.

Date: January 12, 2011 _____
Judge of the Superior Court

NOTE: In the event of trial, plaintiff is entitled to a daily damage award up to the date of trial. But if a default is entered, daily damages are awarded to the date possession is restored.

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX L Sample Stipulation to Judgment for Possession and Money

APPENDIX L

Sample Stipulation to Judgment for Possession and Money

For how to proceed, see step 4, above. For an alternative form, see Stipulation for Entry of Judgment (Unlawful Detainer) (Judicial Council Form UD-115).

David M. Gurewitz (State Bar No. 76641)

4108-A Highland Avenue

Manhattan Beach, CA 90266

(310) 545-5696

Attorney for Plaintiff ABC Landlord

SUPERIOR COURT OF CALIFORNIA

COUNTY OF __ *[LOS ANGELES]* __

__ *[LIMITED CIVIL CASE]* __

ABC LANDLORD, a California corporation,)

Plaintiff)

vs)

XYZ TENANT, a California corporation;)

DOES 1 through 20, inclusive,)

Defendants)

No. _____

STIPULATION TO JUDGMENT

FOR POSSESSION AND MONEY

IT IS HEREBY STIPULATED by and between Plaintiff ABC LANDLORD, a California corporation ("Plaintiff"), and Defendant XYZ TENANT, a California corporation ("Defendant"), that Plaintiff shall be awarded judgment for possession of the real property premises located at 1000 Canyon Road, Los Angeles, County of Los Angeles, California ("Subject Premises"), and further, that judgment shall be entered on behalf of Plaintiff and against Defendant for the sum of all unpaid rent through and including the month possession of the Subject Premises is restored to Plaintiff together with interest at the rate of ten percent (10%) per annum on any payment from the date due until entry of Judgment for Money, late charges, Plaintiff's actual attorney fees, and court costs. True and correct copies of the Judgments for Possession and Money are attached to this stipulation as Exhibits 1 and 2, respectively, and incorporated by this reference.

IT IS FURTHER STIPULATED by the parties that:

1. This Stipulation to Judgment for Possession and Money ("Stipulation") shall be filed with the court; however, Judgments for Possession and Money in the form attached as Exhibits 1 and 2, respectively, shall not be entered as long as Defendant pays Plaintiff's attorney, David M. Gurewitz at 4108-A Highland Ave., Manhattan Beach, CA 90266, the following made payable to ABC Landlord:

- a. Defendant shall pay Plaintiff \$10,000 on or before July 31, 2011;
- b. Defendant shall pay Plaintiff \$10,000 on or before August 15, 2011;

c. Defendant shall pay Plaintiff \$10,000 on or before August 31, 2011; and

d. Defendant shall pay Plaintiff \$10,000 on or before September 15, 2011.

2. If Defendant fails to timely pay any payment called for above in paragraph 1, when due, then it is understood, agreed, and stipulated that Plaintiff shall be entitled to have Judgment for Possession entered and a Writ of Execution for possession issued forthwith on ex parte application to the court, and on the declaration of David M. Gurewitz, of not having received one or more payments due according to the schedule for payments set forth in paragraph 1, above, and the further Declaration of David M. Gurewitz of having given Terry Tenant, on behalf of Defendant, five (5) days' written notice of Defendant's default in payment sent by fax transmission to (310) 555-5555. Defendant can cure the default by paying the payment(s) due during the five (5)-day notice period. If Defendant fails to cure the default, Judgment for Possession in the form attached hereto as Exhibit 1 shall be entered forthwith on ex parte application to the Court, and, furthermore, Judgment for Money in the form attached hereto as Exhibit 2 shall also be entered once Plaintiff is restored to possession of the Subject Premises. It is further understood, agreed, and stipulated that Plaintiff may obtain the Judgment for Money on ex parte application to the court and on the declaration of David M. Gurewitz of not having received the payment(s) due under the schedule of payments set forth in paragraph 1, above, and the further declaration of Plaintiff's counsel setting forth the following:

a. The date possession of the Subject Premises was restored to Plaintiff;

b. The unpaid principal rental balance due and owing Plaintiff by Defendant through the month possession of the Subject Premises is restored to Plaintiff;

c. Interest at the rate of ten percent (10%) per annum on the unpaid principal rental balance from the date due until the date Judgment for Money is entered;

d. Actual attorney fees and court costs incurred by Plaintiff; and

e. Unpaid late charges due and owing Plaintiff by Defendant.

3. Defendant acknowledges that it is aware that it is entitled to notice of hearing and hearing in the event of any default of any of the provisions provided herein; Defendant hereby waives said right of notice of hearing and hearing before the entry of Judgment for Possession and Judgment for Money; and Defendant expressly consents that a Writ of Execution for possession and money may issue without notice in Plaintiff's favor and that the Marshal or sheriff of Los Angeles County be directed to evict Defendant if Defendant defaults as more fully set forth above, it being the stipulation of Defendant that all stays of execution are hereby waived in that event.

4. It is further stipulated and agreed that Defendant has voluntarily, knowingly, and intelligently waived its civil due process rights to trial, notice, and hearing if Defendant defaults.

5. It is further stipulated and agreed that at all material times, Defendant has had the opportunity to consult with legal counsel of Defendant's own choosing about its rights regarding the form and content of this Stipulation.

6. If all installments as called for above are timely paid, Plaintiff shall deliver to Defendant's attorney a dismissal of this action with prejudice.

7. It is further stipulated and agreed that no appeal shall be allowed from any judgment entered under this Stipulation, nor shall Defendant be entitled to any relief under California Code of Civil Procedure §1174(c) or §1179.

8. Defendant stipulates and represents that it is the only tenant occupying the Subject Premises and that no other person(s) or entity(ies) of whatever form have any possessory interest in the Subject Premises. Defendant agrees not to allow any person(s) or entity(ies) to gain a possessory interest in the Subject Premises in the future without Plaintiff's express prior written consent.

9. It is further stipulated and agreed by and between Plaintiff and Defendant, that Plaintiff hereby reserves any and all rights including, but not limited to, recovery of damages under California Civil Code §1951.2 and under the terms and conditions of the lease for the Subject Premises if Defendant defaults in the payments called for in paragraph 1, above, and Judgment is entered hereon.

10. For valuable consideration, Defendant, on its own behalf and on behalf of its respective officers, directors, shareholders, agents, employees, predecessors, successors, attorneys, assigns, heirs, and representatives, does hereby generally release and discharge Plaintiff, and each of Plaintiff's officers, directors, shareholders, agents, employees, predecessors, successors, attorneys, assigns, heirs, and representatives, from any and all debts, obligations, claims, demands, causes of action, liabilities, costs, and attorney fees (collectively "Claims"), existing, arising, or accruing, of whatever nature, whether sounding in contract or tort (intentional or otherwise), whether anticipated or unanticipated, and whether known or unknown, which arise from, may arise

from, or in any way are connected with this action, including the Lease that is subject of the above-captioned action. Defendant understands that this release is intended to release Claims that may not be presently known to Defendant. In that regard, Defendant acknowledges and expressly waives the provisions of California Civil Code §1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Date: _____
Plaintiff

ABC Landlord, a California corporation,

By: _____

Title: _____

Date: _____
Defendant

XYZ TENANT, a California corporation,

By: _____

Title: _____

APPROVED AS TO FORM AND CONTENT:

Date: _____

David M. Gurewitz, Attorney at Law

By: _____

David M. Gurewitz, Attorney for

Plaintiff ABC Landlord,
a California corporation

Date: _____

Joe Lawyer, Attorney for

Defendant XYZ Tenant,
a California corporation

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Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX M Writ of Execution (Judicial Council Form EJ-130)

APPENDIX M
Writ of Execution (Judicial Council Form EJ-130)

For how to proceed, see discussion of writ of possession, [step 35](#), above.



| | |
|------------------------------|--------------|
| PLAINTIFF: DEFENDANT: | CASE NUMBER: |
|------------------------------|--------------|

— 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):
 (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 property.
- d. Sale of real property.
- e. Description of property:

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).

Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX N Notice of Stay of Proceedings (Judicial Council Form CM-180; Mandatory)

APPENDIX N

Notice of Stay of Proceedings (Judicial Council Form CM-180; Mandatory)

For how to proceed, see step 27, above.



| | |
|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____ | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: | |
| NOTICE OF STAY OF PROCEEDINGS | CASE NUMBER: JUDGE: DEPT.: |

To the court and to all parties:

1. Declarant *(name)*:
 - a. is the party the attorney for the party who requested or caused the stay.
 - b. is the plaintiff or petitioner the attorney for the plaintiff or petitioner. The party who requested the stay has not appeared in this case or is not subject to the jurisdiction of this court.

2. This case is stayed as follows:
 - a. With regard to all parties.
 - b. With regard to the following parties *(specify by name and party designation)*:

3. Reason for the stay:
 - a. Automatic stay caused by a filing in another court. *(Attach a copy of the Notice of Commencement of Case, the bankruptcy petition, or other document showing that the stay is in effect, and showing the court, case number, debtor, and petitioners.)*
 - b. Order of a federal court or of a higher California court. *(Attach a copy of the court order.)*
 - c. Contractual arbitration under Code of Civil Procedure section 1281.4. *(Attach a copy of the order directing arbitration.)*
 - d. Arbitration of attorney fees and costs under Business and Professions Code section 6201. *(Attach a copy of the client's request for arbitration showing filing and service.)*
 - e. Other:

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 OF DECLARANT)

(SIGNATURE)

Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX O Motion for Relief From the Automatic Stay Under 11 USC §362(l) (Central District Form F 4001-1M.UD; Unlawful Detainer; Mandatory)

APPENDIX O

Motion for Relief From the Automatic Stay Under 11 USC §362(l)
(Central District Form F 4001-1M.UD; Unlawful Detainer; Mandatory)

For how to proceed, see [step 27](#), above.



| | |
|--|-----------------------------------|
| Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number <input type="checkbox"/> Individual appearing without counsel <input type="checkbox"/> Attorney for: | FOR COURT USE ONLY |
| UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA | CHAPTER: CASE NO.: |
| In re: <div style="text-align: right;">Debtor(s).</div> | DATE: TIME: CTRM: FLOOR: |

NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR FOR ORDER CONFIRMING THAT THE AUTOMATIC STAY DOES NOT APPLY UNDER 11 U.S.C. § 362(l) (with supporting declarations)
(MOVANT: _____)
(Unlawful Detainer)

1. NOTICE IS HEREBY GIVEN to the Debtor(s), Debtor's(s') attorney, and other interested parties ("Responding Party") that on the above date and time and in the indicated courtroom, Movant in the above-captioned matter will move this Court for an Order granting relief from the automatic stay or for an order confirming that the automatic stay does not apply as to Debtor(s) and Debtor's(s') bankruptcy estate on the grounds set forth in the attached Motion.

NOTICE IS ALSO GIVEN to the Trustee as an additional Responding Party, because the Motion relates to a nonresidential property.

2. Hearing Location: 255 East Temple Street, Los Angeles 411 West Fourth Street, Santa Ana
 21041 Burbank Boulevard, Woodland Hills 1415 State Street, Santa Barbara
 3420 Twelfth Street, Riverside

3. a. This Motion is being heard on REGULAR NOTICE pursuant to Local Bankruptcy Rule 9013-1. If you wish to oppose this Motion, you must file a written response to this Motion with the Bankruptcy Court and serve a copy of it upon the Movant's attorney (or upon Movant, if the Motion was filed by an unrepresented individual) at the address set forth above no less than 14 days before the above hearing and appear at the hearing of the Motion.
- b. This Motion is being heard on SHORTENED TIME. If you wish to oppose this Motion, you must appear at the hearing. Any written response or evidence must be filed and served:
 at the hearing at least _____ court days before the hearing.
- (1) A Motion for Order Shortening Time was not required (according to the calendaring procedures of the assigned judge).
- (2) A Motion for Order Shortening Time was filed per Local Bankruptcy Rule 9075-1(b) and was granted by the Court and such motion and order have been or are being served upon the debtor and trustee, if any.
- (3) A Motion for Order Shortening Time has been filed and remains pending. Once the Court has ruled on that Motion, you will be served with another notice or an order that will specify the date, time and place of the hearing on the attached Motion and the deadline for filing and serving a written opposition to the Motion.

(Continued on next page)

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.

F 4001-1M.UD



| | |
|----------------------------|-----------|
| In re (SHORT TITLE) | CHAPTER: |
| Debtor(s). | CASE NO.: |

4. You may contact the Bankruptcy Clerk's Office to obtain a copy of an approved court form for use in preparing your response (*Optional Court Form F 4001-1M.RES*), or you may prepare your response using the format required by Local Bankruptcy Rule 1002-1.
5. If you fail to file a written response to the Motion or fail to appear at the hearing, the Court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.

Dated:

Print Law Firm Name (if applicable)

Print Name of Individual Movant or Attorney for Movant

Signature of Individual Movant or Attorney for Movant

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.

December 2009

F 4001-1M.UD



Print

| | |
|--|---------------------------|
| In re (SHORT TITLE) Debtor(s). | CHAPTER: CASE NO.: |
|--|---------------------------|

MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR FOR ORDER CONFIRMING THAT THE AUTOMATIC STAY DOES NOT APPLY (Unlawful Detainer)

(MOVANT: _____)

1. **The Property at Issue:** Movant moves for relief from the automatic stay to obtain possession of the residential or nonresidential premises at the following address (the "Property"):

Street Address:
Apartment/Suite No.:
City, State, Zip Code:

The Property is: Residential Nonresidential

2. **Case History:**

- a. A voluntary An involuntary petition under Chapter 7 11 12 13 was filed on (specify date):
- b. An Order of Conversion to Chapter 7 11 12 13 was entered on (specify date):
- c. Plan was confirmed on (specify date):
- d. Other bankruptcy cases of the Debtor were pending within the year ending on the petition date. See attached Declaration.
- e. Other bankruptcy cases affecting this Property have been pending within the two years ending on the petition date. See attached Declaration.

3. **Grounds for Relief from Stay: (Check all that apply)**

- a. Pursuant to 11 U.S.C. § 362(d)(1), cause exists because, as of petition date, Debtor(s) had no right to continued occupancy of the premises, as follows:
 - (1) An unlawful detainer judgment in favor of Movant was entered prepetition.
 - A. The debtor has not filed with the petition and served on the Movant the certification required under 11 U.S.C. § 362(l)(1).
 - B. The debtor or adult dependent of debtor has not deposited with the Clerk any rent that would become due during the 30-day period after the filing of the petition.
 - C. The debtor or adult dependent of debtor has not filed and served on the Movant the further certification required under 11 U.S.C. § 362(l)(2) that the entire monetary default that gave rise to the judgment has been cured.
 - D. The Movant has filed and served an objection to the certification referenced in (a)(1)(A) and/or (a)(1)(C) above. A copy of the objection is attached hereto as Exhibit _____. A hearing on this objection is set for: _____.
 - (2) An unlawful detainer proceeding was commenced prepetition.
 - (3) Movant acquired title to the premises by foreclosure sale prepetition and recorded the deed within the period provided by state law for perfection.
 - (4) Movant acquired title to the premises by foreclosure sale postpetition and recorded the deed within the period provided by state law for perfection.
 - (5) The lease or other right of occupancy expired by its terms prepetition.
 - (6) The lease has been rejected or deemed rejected by operation of law.
 - (7) Lease payments have not been made since the filing of the petition.

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.



| | | |
|-----------------------------|---------------|-----------|
| In re Debtor(s). | (SHORT TITLE) | CHAPTER: |
| | | CASE NO.: |

(8) An eviction action has been filed to obtain possession of the subject residential property on grounds of endangerment of the property or because of illegal use of controlled substances on the property and Movant has filed and served upon Debtor a certification that such an action was filed or that within the 30 days preceding the certification Debtor has endangered the subject property or illegally allowed the use of controlled substances on the property. A copy of Movant's certification is attached as Exhibit _____. Debtor has has not filed an objection to Movant's certification. A copy of Debtor's objection, if any, is attached as Exhibit _____. A hearing on this objection is set for: _____.

b. Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtor(s) has/have no equity in the Property; and pursuant to § 362(d)(2)(B), the Property is not necessary to an effective reorganization.

c. The bankruptcy case was filed in bad faith to delay, hinder or defraud Movant.

(1) Movant is the only creditor or one of very few creditors listed on the master mailing matrix.

(2) Other bankruptcy cases have been filed asserting an interest in the same property.

(3) The Debtor(s) filed what is commonly referred to as a "face sheet" filing of only a few pages consisting of the Petition and a few other documents. No Schedules or Statement of Affairs (or Chapter 13 Plan, if appropriate) has been filed.

4. Evidence in Support of Motion: (Important Note: Declaration(s) in support of the Motion MUST be attached hereto.)

Movant submits the attached Unlawful Detainer Declaration to provide evidence in support of this Motion pursuant to Local Bankruptcy Rules.

Other Declaration(s) are also attached in support of this Motion.

WHEREFORE, Movant prays that this Court issue an Order granting the following (specify forms of relief requested):

1. Termination of the stay to allow Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to obtain possession of the Property.

2. Annulment of the stay so that the filing of the bankruptcy petition does not affect postpetition acts, as set forth in the attached Declaration(s).

3. An order confirming that the automatic stay does not apply.

4. Alternatively, if immediate relief from stay is not granted with respect to the Property because the Property is the subject of a lease that may be assumable:

a. Establishment of a deadline for assumption or rejection of the lease.

b. Adequate protection in the form of regular payments at the lease rate from petition date until assumption or rejection of the lease.

(Continued on next page)

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.

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|---|---------------------------|
| In re _____ (SHORT TITLE) Debtor(s) | CHAPTER: CASE NO.: |
|---|---------------------------|

5. Additional provisions requested:

- a. That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
- b. Termination or modification of the Co-debtor Stay of 11 U.S.C. § 1201 or § 1301 as to the above-named co-debtor, on the same terms and conditions.
- c. That the 14-day stay prescribed by Bankruptcy Rule 4001(a)(3) be waived.
- d. That Extraordinary Relief be granted as set forth in the Attachment (*attach Optional Court Form F 4001-1M.ER*).
- e. For other relief requested, see attached continuation page.

Dated: _____ Respectfully submitted,

Movant Name

Firm Name of Attorney for Movant (if applicable)

By: _____
Signature

Name: _____
Typed Name of Individual Movant or Attorney for Movant

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.



| | |
|--|---------------------------|
| In re _____ (SHORT TITLE) Debtor(s). | CHAPTER: CASE NO.: |
|--|---------------------------|

UNLAWFUL DETAINER DECLARATION
(MOVANT: _____)

I, _____, declare as follows:
 (Print Name of Declarant)

1. I have personal knowledge of the matters set forth in this declaration and, if called upon to testify, I could and would competently testify thereto. I am over 18 years of age. I have knowledge regarding Movant's interest in the residential or nonresidential real property that is the subject of this Motion ("Property") because:

- I am the Movant and owner of the Property.
- I manage the Property as the authorized agent for the Movant.
- I am employed by Movant as (state title and capacity):
- Other (specify):

2. I am one of the custodians of the books, records and files of Movant as to those books, records and files that pertain to the rental of this Property. I have personally worked on books, records and files, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Movant on behalf of Movant, which were made at or about the time of the events recorded, and which are maintained in the ordinary course of Movant's business at or near the time of the acts, conditions or events to which they relate. Any such document was prepared in the ordinary course of business of Movant by a person who had personal knowledge of the event being recorded and had or has a business duty to record accurately such event. The business records are available for inspection and copies can be submitted to the Court if required.

3. The address of the Property that is the subject of this Motion is:

Street Address:
Apartment/Suite No.:
City, State, Zip Code:

4. Movant is the legal owner of the Property, or the owner's legally authorized agent. A true and correct copy of the Trustee's Deed upon Sale, lease, rental agreement, or other document evidencing Movant's interest in the Property is attached as Exhibit _____. A true and correct copy of any applicable document establishing Movant's authority as agent for the owner is attached as Exhibit _____.

5. The Property is: residential property nonresidential property

a. Debtor(s) occupies the Property

- on a month-to-month tenancy pursuant to a lease that is in default
- after a foreclosure sale on: _____ other (specify):

b. Debtor(s) has/have failed to pay the monthly rent of \$ _____ since the following date (specify date):

c. In addition, Debtor(s) has/have failed to pay other obligations under the lease, including the following (See attached continuation page for itemization):

- (1) Common area maintenance charges
- (2) Property taxes
- (3) For additional obligations, see attached continuation page.

(Continued on next page)

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.



| | | |
|-----------------------------|---------------|-----------|
| In re Debtor(s). | (SHORT TITLE) | CHAPTER: |
| | | CASE NO.: |

6. Debtor's(s) bankruptcy petition in this case was filed on *(specify date)*:
7. Procedural status *(indicate all that apply, and provide dates for completed steps)*:
- a. Movant caused a Notice to Quit to be served upon the Debtor(s) on *(specify date)*:
A true and correct copy of which is attached hereto as Exhibit _____
- b. Before the filing of the petition, Movant had commenced an unlawful detainer proceeding in state court and completed the following:
- (1) Movant filed a Complaint for Unlawful Detainer against the Debtor(s) on *(specify date)*: _____, a true and correct copy of which is attached as Exhibit _____.
- (2) Trial was held on *(specify date)*:
- (3) An Unlawful Detainer Judgment against the Debtor(s) was entered on the Complaint for Unlawful Detainer on *(specify date)*: _____, a true and correct copy of which is attached as Exhibit _____.
- (4) A Writ of Possession for the Property was issued by the state court on *(specify date)*: _____, a true and correct copy of which is attached as Exhibit _____.
- (5) The Debtor has not filed with the petition and served on the Movant the certification required under 11 U.S.C. § 362(l)(1).
- (6) The Debtor or adult dependent of Debtor has not deposited with the Clerk any rent that would become due during the 30-day period after the filing of the petition.
- (7) The debtor or adult dependent of debtor has not filed and served on the Movant the further certification required under 11 U.S.C. § 362(l)(2) that the entire monetary default that gave rise to the judgment has been cured.
- (8) Movant has filed and served an objection to Debtor's certification referenced in paragraph (5) and/or (7) above, a copy of which is attached hereto as Exhibit _____. A hearing on this objection is set for: _____.
- (9) An eviction action has been filed to obtain possession of the Property on grounds of endangerment of the Property or because of illegal use of controlled substances on the Property and Movant has filed a certification that such action was filed or that Debtor has endangered the subject property within 30 days preceding the certification or allowed the illegal use of controlled substances on the Property. A copy of Movant's certification is attached hereto as Exhibit _____. Debtor has has not filed an objection to Movant's certification. A copy of Debtor's objection, if filed, is attached hereto as Exhibit _____. A hearing on this objection is set for: _____.
- c. The lease was rejected on _____ *(date)*:
- (1) by operation of law.
- (2) by Order of the Court.
- d. The regular lease payments have not been made since the filing of the petition.
8. Debtor(s) has/have no equity in the Property because Debtor(s) does/do not have a lease interest that could be assumed or assigned under 11 U.S.C. § 365.
9. The Property is not necessary to an effective reorganization because *(specify)*:
- a. The Property is residential and is not producing income for the Debtor(s).
- b. The Property is commercial, but no reorganization is reasonably in prospect.
- c. Other *(specify)*:

(Continued on next page)

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.

December 2009

F 4001-1M.UD



| | |
|---------------------|-----------|
| In re (SHORT TITLE) | CHAPTER: |
| Debtor(s). | CASE NO.: |

10. The bankruptcy case was filed in bad faith to delay, hinder or defraud Movant.
- a. Movant is the only creditor or one of very few creditors listed on the master mailing matrix.
- b. Other bankruptcy cases have been filed asserting an interest in the same property.
- c. The Debtor(s) filed what is commonly referred to as a "face sheet" filing of only a few pages consisting of the Petition and a few other documents. No Schedules or Statement of Affairs (or Chapter 13 Plan, if appropriate) has been filed.
- d. Other (*specify*):
11. Other bankruptcy cases that have prevented Movant from recovering possession of this Property include the following:
- a. Case Name: _____
 Case Number: _____ Chapter: _____
 Date Filed: _____ Date Dismissed: _____
 Relief from stay re this Property was was not granted.
- b. Case Name: _____
 Case Number: _____ Chapter: _____
 Date Filed: _____ Date Dismissed: _____
 Relief from stay re this Property was was not granted.
- c. See attached continuation page for more information about other cases.
12. Movant seeks annulment of the automatic stay so that the filing of the bankruptcy petition does not affect any and all of the actions set forth in paragraph 7 that were taken after the filing of the bankruptcy petition in this case.
- a. These actions were taken by Movant without knowledge of the bankruptcy filing, and Movant would have been entitled to relief from stay to proceed with these actions.
- b. Although Movant knew about the bankruptcy filing, Movant had previously obtained relief from stay to proceed with these enforcement actions in prior bankruptcy cases affecting this Property as set forth in paragraph 11 above.
- c. For other facts justifying annulment, see attached continuation page.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on _____, _____, at _____ (city, state).

 Print Declarant's Name

 Signature of Declarant



| | |
|------------------------------|-------------------|
| In re _____ (SHORT TITLE) | CHAPTER: _____ |
| Debtor(s). _____ | CASE NO.: _____ |

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on a CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document described as _____ will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d), and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____ I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addressed indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):
On _____ I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follow. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____ I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method) by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

| | | |
|-------------|------------------|------------------|
| <i>Date</i> | <i>Type Name</i> | <i>Signature</i> |
|-------------|------------------|------------------|

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.D

December 2009

4001-1M.UD

Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX P Order Granting Motion for Relief From Stay Under 11 USC §362 (Central District Form F 4001-1O.UD; Unlawful Detainer; Mandatory)

APPENDIX P

Order Granting Motion for Relief From Stay Under 11 USC §362
(Central District Form F 4001-1O.UD; Unlawful Detainer; Mandatory)

For how to proceed, see [step 27](#), above.



| | |
|---|---|
| Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number <input type="checkbox"/> Individual appearing without counsel <input type="checkbox"/> Attorney for: Debtor | FOR COURT USE ONLY |
| UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA | |
| In re: <div style="text-align: right;">Debtor(s).</div> | CHAPTER: CASE NO.: DATE: TIME: CTM: FLOOR: |

**ORDER GRANTING MOTION FOR RELIEF FROM STAY
UNDER 11 U.S.C. § 362
(Unlawful Detainer)**

(MOVANT: _____)

1. The Motion was: Contested Uncontested Settled by Stipulation

2. This Order applies to the following residential or nonresidential real property (the "Property"):

Street Address:
Apartment/Suite No.:
City, State, Zip Code:

3. The Court orders that the Motion is granted under 11 U.S.C. § 362(d)(1) and (d)(2). The stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a), if applicable, (the "Stay") is/are terminated as to Debtor(s) and Debtor's(s') bankruptcy estate with respect to Movant, its successors, transferees and assigns ("Movant"). Movant may enforce its remedies to obtain possession of the Property in accordance with applicable non-bankruptcy law, but may not pursue any deficiency claim against the Debtor(s) or property of the estate, except by filing a Proof of Claim in this bankruptcy case pursuant to 11 U.S.C. § 501.

4. The Court further orders as follows:

- a. Movant shall not cause the Debtor(s) to be locked out before the following date (*specify*):
- b. The Stay is annulled retroactive to the petition date. Any postpetition acts taken by Movant to enforce its remedies to obtain possession of the Property shall not constitute a violation of the Stay.
- c. This Order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
- d. All provisions of this Order also apply to relief from the co-debtor stay under 11 U.S.C. § 1201 or § 1301, as applicable to the above-named co-debtor.
- e. The 14-day stay provided by Bankruptcy Rule 4001(a)(3) is waived.
- f. The provisions set forth in the Extraordinary Relief Attachment shall also apply (*attach Optional Form F 4001-10.ER*).
- g. See attached continuation page for additional provisions.

Dated:

UNITED STATES BANKRUPTCY JUDGE

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.

December 2000

F 4001-10.UD



| | | |
|-----------------------------|---------------|---------------------------|
| In re Debtor(s). | (SHORT TITLE) | CHAPTER: CASE NO.: |
|-----------------------------|---------------|---------------------------|

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on a CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document described as _____ will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d), and **(b)** in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____ I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addressed indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On _____ I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follow. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____ I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method) by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

| | | |
|-------------|------------------|------------------|
| | | |
| <i>Date</i> | <i>Type Name</i> | <i>Signature</i> |

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.

December 2009

F 4001-10.UD

Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX Q Order Denying Motion for Relief From the Automatic Stay Under 11 USC §362 (Central District Form F 4001-1O.DENY; Mandatory)

APPENDIX Q

Order Denying Motion for Relief From the Automatic Stay Under 11 USC §362
(Central District Form F 4001-1O.DENY; Mandatory)

For how to proceed, see discussion, [step 27](#), above.



| | |
|--|--|
| Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number <input type="checkbox"/> <i>Individual appearing without counsel</i> <input type="checkbox"/> <i>Attorney for Movant</i> | FOR COURT USE ONLY |
| UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA | |
| In re: _____ <div style="text-align: right;">Debtor(s). Trustee.</div> | CHAPTER: CASE NO.: <hr/> DATE: TIME: CTRM: FLOOR: |

**ORDER DENYING MOTION FOR RELIEF FROM THE AUTOMATIC STAY
UNDER 11 U.S.C. § 362**

(MOVANT: _____)

1. The Motion was: Contested Uncontested Not Prosecuted
2. The description of the property (the "Property") to which this Order applies is as follows (*specify common description or street address*):
3. The Motion is denied: without prejudice with prejudice on the following grounds:
 - Based upon the findings and conclusions made on the record at the hearing
 - Unexcused non-appearance by Movant
 - Lack of proper service
 - Lack of good cause shown for relief from stay
 - The automatic stay is no longer in effect under:
 - 11 U.S.C. § 362(c)(2)(A)
 - 11 U.S.C. § 362(c)(2)(B)
 - 11 U.S.C. § 362(c)(3)(A)
 - 11 U.S.C. § 362(c)(4)(A)
 - Other (*specify*):
4. Movant may not file another motion for relief from the stay in this case absent a court order authorizing re-filing.

Dated:

UNITED STATES BANKRUPTCY JUDGE

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.

January 2009

F 4001-10.DENY



Source: Real Property/Handling Unlawful Detainers (Action Guide)/APPENDIX R Notice of Termination or Modification of Stay (Judicial Council Form CM-181; Mandatory)

APPENDIX R

Notice of Termination or Modification of Stay (Judicial Council Form CM-181; Mandatory)

For how to proceed, see discussion, [step 2Z](#), above.



| | |
|---|-------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____ | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____ | |
| PLAINTIFF/PETITIONER: _____ | CASE NUMBER: _____ |
| DEFENDANT/RESPONDENT: _____ | DEPT.: _____ |
| NOTICE OF TERMINATION OR MODIFICATION OF STAY | JUDICIAL OFFICER: _____ |

To the court and all parties:

1. A *Notice of Stay of Proceedings* was filed in this matter on (date): _____
2. Declarant named below is
 - a. the party the attorney for the party who requested or caused the stay.
 - b. other (describe): _____
3. The stay described in the above referenced *Notice of Stay of Proceedings*
 - a. has been vacated by an order of another court. (Attach a copy of the court order.)
 - b. is no longer in effect.
4. The stay has been modified (describe): _____

5. The stay has been vacated, is no longer in effect, or has been modified
 - a. with regard to all parties.
 - b. with regard to the following parties (specify by name and party designation): _____

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 OF DECLARANT)

(SIGNATURE OF DECLARANT)



| | |
|------------|--------------|
| PLAINTIFF: | CASE NUMBER: |
| DEFENDANT: | |

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF TERMINATION OR MODIFICATION OF STAY**

(NOTE: You cannot serve the Notice of Termination or Modification of Stay if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:

2. I served a copy of the *Notice of Termination or Modification of Stay* by enclosing it in a sealed envelope with postage fully prepaid and *(check one)*:
 - a. deposited the sealed envelope with the United States Postal Service.
 - b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Termination or Modification of Stay* was mailed:
 - a. on *(date)*:
 - b. from *(city and state)*:

4. The envelope was addressed and mailed as follows:

| | |
|--|--|
| <ol style="list-style-type: none"> a. Name of person served: Street address: City: State and zip code: | <ol style="list-style-type: none"> c. Name of person served: Street address: City: State and zip code: |
| <ol style="list-style-type: none"> b. Name of person served: Street address: City: State and zip code: | <ol style="list-style-type: none"> d. Name of person served: Street address: City: State and zip code: |

Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

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 OF DECLARANT) | | (SIGNATURE OF DECLARANT) |
|-----------------------------------|--|--------------------------|

Source: Real Property/Handling Unlawful Detainers (Action Guide)/TABLE OF STATUTES, REGULATIONS, AND RULES

TABLE OF STATUTES, REGULATIONS, AND RULES

CALIFORNIA

Constitution

Cal Const art VI, §10: [Step 11](#)

Cal Const art XV, §1: [Step 12](#)

Statutes

BUSINESS AND PROFESSIONS CODE

20020: [Step 2](#)

20999.1: [Step 2](#)

CIVIL CODE

51: [Step 25](#)

789: [Steps 8, 12](#)

789.3(a): [Step 1](#)

789.3(b)(1): [Step 1](#)

798.55: [Step 5](#)

800.70: [Step 5](#)

1161b: [Step 2](#)

1542: [App L](#)

1671: [Step 6](#)

1717: [Steps 12, 16, 31, 35, 38](#)

1717(b)(2): [Step 31](#)

1812.10: [App G](#)

1940.2: [Step 1](#)

1941-1941.1: [Steps 25, 33](#)

1941.3: [Step 25](#)

1942: [Step 25](#)

1942.4: [Steps 25, 33, 38](#)

1942.5: [Step 25](#)

1942.5(f): [Step 25](#)

1946: [Steps 2, 8, 9, 12](#)

1946: [Step 2, App E](#)

1946-1946.1: [Step 8](#)

1946.1: [Steps 2, 8, 9, 12, App E](#)

1946.1(a): [Step 12](#)

1946.1(d): [Step 8](#)

1946.1(e): [Steps 8, 12](#)

1946.7: [Step 2](#)

1947.3: [Steps 6, 10](#)

1950.5: [Step 41](#)

1950.5(b)(1)-(4): [Step 41](#)

1950.5(f): [Steps 8, 9, 41](#)

1950.5(g): [Step 41](#)

1950.5(h)-(i): [Step 41](#)

1950.5(l): [Step 41](#)

1950.7: [Step 41](#)

1950.7: [Step 41](#)

1951.2: [Steps 6, 39, App A, App L](#)

1951.3: [Step 1, App A](#)

1951.3(a): [Step 1](#)

1951.3(b): [Step 1](#)

1951.4: [Step 25](#)

1952.3: [Step 19](#)

1952.3(a): [Step 25](#)

1952.3(a)(1): [Step 19](#)

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