

LASSEN SUPERIOR COURT, HALL OF JUSTICE
ACCESS TO JUSTICE CENTER

2610 Riverside Drive, CA 96130 ~ (530)251-8205

- EVICTIONS -
(UNLAWFUL DETAINER)
LANDLORD INFORMATION

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A lawsuit to evict a tenant is called an **unlawful detainer**. California laws provide a quick means for getting a tenant out of a property when the tenant has not paid rent or has violated some other term of the lease or rental agreement. However, the landlord must follow the law precisely for the quick remedy to work. Because of the need for precision and the complexity of the laws and procedure, it is always recommended that a landlord use an attorney to evict a tenant.

Most attorneys who do unlawful detainers work for a reasonable fixed fee, often considerably less than one month's rent. It is always more cost effective to use an attorney than to file the unlawful detainer *in pro per*, meaning on your own behalf.

If you choose to represent yourself rather than use an attorney, there are many books that can guide you on how to proceed with an unlawful detainer action. You will need to read all the information carefully. As a plaintiff filing a lawsuit without an attorney, you are responsible for knowing the law as well as an attorney handling the same type of case. Therefore, if you proceed in pro per, you must plan to spend a lot of time studying the law so you are prepared to properly proceed with each step of the case.

ENDING THE TENANCY

The only way to legally remove a tenant from your property is to get a court order that says the tenant must move out. Locking the tenant out or shutting off the utilities to make the tenant move is considered "self-help" and could result in the tenant suing you. You may be ordered to pay statutory penalties for each day the tenant is locked out, in addition to the tenant's actual damages. Before you can get a court order to remove the tenant, you must serve the tenant with a *written* notice.

GIVING NOTICE TO THE TENANT THAT YOU WANT HIM OR HER TO MOVE OUT

There are three types of written notice: a three (3) day notice, thirty (30) day notice, and the sixty (60) day notice. Examples of each form can be found in this booklet.

The first step in the eviction process is to determine which notice to serve.

3 DAY NOTICE TO PAY/PERFORM OR QUIT: If the tenant has not paid the agreed upon rent or has violated some other material term of the rental agreement, you can serve the tenant with a 3-day notice to either pay rent, perform the terms of the rental agreement, or move out. If the tenant pays the rent within the three days, or otherwise cures the default within the three days, the tenancy continues as before. If the tenant fails to pay the rent or cure the default within the three days, you can begin the unlawful detainer proceeding immediately thereafter. You can find a sample 3 Day Notice to Pay/Perform or Quit in this booklet.

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If you use a 3-day notice, you will have to prove your reason for eviction in court. Whereas with a 30-day or 60-day notice, you don't have to. A tenant who receives a 3-day notice is a lot more likely to defend the suit that accuses the tenant of misconduct and which gives the tenant a lot less time to look for another place to live. Also, to use a 3-day notice successfully, the problem you're complaining about must be truly serious; for example, non-payment of rent, destruction of the rental unit or drug dealing. You should resort to 3-day notice evictions based on something other than nonpayment of rent only when the problem is serious and time is of the essence.

30-DAY NOTICE TO QUIT: If the tenant has a month-to-month tenancy, you can use a 30-day notice to terminate the tenancy, if they have resided at the premises for less than one year. In most circumstances, you don't have to state a reason for terminating the tenancy.

60-DAY NOTICE TO QUIT: Must be served on the tenant, if they have resided at the premises for more than one year.

A landlord can evict a tenant for no reason, but not the wrong reason. If you evict for an illegal reason, or if it looks like you are trying to evict your tenant for illegal reasons, your tenant can defend the unlawful detainer lawsuit or sue you later for damages. Examples of illegal reasons include discrimination or retaliation for the tenant requesting that the landlord make needed repairs.

If you terminate a month-to-month tenancy with a 30-day or 60-day notice, the tenant has time to move and to cool off emotionally and will probably exit quietly.

PROCEDURAL CHECKLIST

The following checklist can serve as a procedural guide for an eviction based on service of a 3, 30 or 60-day notice.

1. Prepare and serve the 3, 30 or 60-day notice on the tenant(s).
2. Complete the proof of service for the 3, 30, or 60-day notice.
3. Give the tenant the full legal time the law requires (3, 30 or 60 full days from the date of service) before filing the unlawful detainer complaint.
4. Prepare the summons, complaint, civil case cover sheet, and, if you choose to, a prejudgment claim of right to possession. These papers are called pleadings. You can obtain these documents off of the following website: www.courtinfo.ca.gov or from the Access to Justice Center.

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5. Make two copies of each pleading before you file the originals with the court.
6. Bring the original and 2 copies of each pleading to the civil filing clerk's office along with the appropriate filing fee. The clerk will file the originals and conform the extra copies with a stamp. The clerk will also issue the summons and return the original to you. There will be a filing fee to file the complaint unless you qualify for a fee waiver.
7. Have a licensed process server, the sheriff, or an adult who is not a party to the lawsuit serve a copy of the summons, complaint, and, if you choose, the prejudgment claim of right to possession, on each named defendant in the case. **NOTE:** If you suspect that there may be unidentified occupants living in the premises, have a licensed process server or sheriff: (1) Leave a copy of the summons, complaint, and prejudgment right to possession at the same time service is made on the tenant or any subtenant; (2) affix copies of the same documents on the premises; and (3) send copies of the same documents addressed to "all occupants in care of the named tenant" to the premises by first class mail.
8. Have the person serving the papers on the defendants prepare a proof of service.
9. Make a copy of the proof of service.
10. File the original proof of service along with the original issued summons at the civil clerk's office. The clerk will stamp the conformed copies for you to keep.
11. Calendar the date when the defendant's response is due. If the defendant was personally served, the response is due in five (5) days. If the defendant was served by substitute service, the response is due in fifteen (15) days. If a prejudgment claim to right to possession was served, the claimant has ten (10) days to file the claim.
12. **If the defendant responds timely**, then you will need to complete a request/counter-request to set case for trial and make 2 copies.
13. Have someone over the age of 18 send the defendant a copy of the request to set case for trial 1st class mail and complete the proof of service on the 2nd page.
14. File the request with the proof of service completed with the court clerk.
15. The court clerk will send out a notice of court trial to both you and the defendant.

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16. **If the judgment is in your favor after the court trial, you will need to prepare a memorandum of costs and judgment for the judge to sign and proceed to #24 below.**
17. If the defendant fails to respond in the time the law allows, then you can ask the court to take his or her default.
18. **For possession of the premises only:** You may request that the clerk enter a clerk's default judgment for restitution of premises. Prepare a request for entry of default for clerk's judgment, clerk's default judgment for restitution of premises and declaration for clerk's judgment and **proceed to #21 below.**
19. **For money judgment and possession of the premises:** You may choose to either appear in court to testify in support of your request for entry of default against the tenant(s), or you may file a declaration instead of having to testify in court.
20. Prepare a request for entry of default and for court judgment, a declaration in support of default judgment and a default judgment.
21. Make two copies (one for you and one for the opposing side) of all of your completed default forms.
22. Take the originals and copies of your completed default forms to the court clerk for filing. The clerk will give you back your conformed (stamped) copies.
23. The clerk will take your default judgment (for money judgment) and will call you in a day or so when the judge has signed it.
24. Prepare a writ of possession and make copies: one for yourself, one for the sheriff, and one for each tenant.
25. Take the original copies of the writ to the clerk's office to be issued.
26. Take copies of the judgment and the writ to the sheriff to serve on the tenants. Keep a copy for yourself. The sheriff's office will charge a fee for this service. The tenants must be out of the residence no later than five (5) days from the date the sheriff serves the writ, or the sheriff will physically remove them and you'll have the right to store the tenant(s)' personal property at their expense.

THREE-DAY NOTICE TO PAY RENT OR QUIT

To: _____, Tenant(s) in possession of the premises at the address of _____, City of _____, County of _____, California. Please take notice that the rent on these premises occupied by you, in the amount of \$ _____, for the time period from _____ to _____, is now due and payable.

YOU ARE HEREBY REQUIRED to pay this amount within **THREE (3) DAYS** from the date of service on you of this Notice, or to vacate and surrender possession of the premises. Payment of this amount may be made:

Personally to: _____ (name), who can be reached at the following address _____, and telephone number _____, and is available during these days and hours: _____

By mail to _____ (name) at the following address _____ postmarked no later than _____ (date) with proof of mailing.

To the account at the following financial institution _____ (name) located at _____ (street address).

By electronic transfer if previously established.

In the event you fail to do so, legal proceedings will be instituted against you to recover possession of the premises, the forfeiture of the rental agreement or lease under which you occupy the premises, and a court judgment of rent, damages and costs of suit.

Date: _____
Owner/Manager _____

PROOF OF SERVICE

For the Three Day Notice to Pay Rent or Quit

I, the undersigned, being at least 18 years of age, served a 3-Day Notice to Pay Rent or Quit, on _____, one of the occupants in possession of the premises at the address of _____, as follows:

- On _____ (date) I delivered the 3-Day Notice to Pay Rent or Quit to the occupant personally.
- On _____ (date) I delivered the 3-Day Notice to Pay Rent or Quit to a person of suitable age and discretion at the occupant's residence/business after having attempted personal service at the occupant's residence, and business if known. On _____ (date) I also mailed a second copy to the occupant at his or her residence.
- On _____ (date) I posted the 3-Day Notice to Pay Rent or Quit in a conspicuous place on the property, after having attempted personal service at the occupant's residence, and business, if known, and after having been unable to find there a person of suitable age and discretion. On _____ (date) I also mailed a second copy to the occupant at the property.

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

Date: _____

Signature: _____

Print name: _____

THREE-DAY NOTICE TO PERFORM COVENANT OR QUIT

To: _____,

Tenant(s) in possession of the premises at _____

City of _____, County of _____, California.

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

in the following manner:

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

Date: _____

Owner/Manager

PROOF OF SERVICE

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

- On _____, 200_, I delivered the notice to the occupant personally.
- On _____, 200_, I delivered the notice to a person of suitable age and discretion at the occupant's residence/business after having attempted personal service at the occupant's residence, and business if known. On _____, 200_, I mailed a second copy to the occupant at his or her residence.
- On _____, 200_, I posted the notice in a conspicuous place on the property after having attempted personal service at the occupant's residence, and business, if known, and after having been unable to find there a person of suitable age and discretion. (On _____, 200_, I mailed a second copy to the occupant at the property.

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

d: _____, 200_.

Signature

30-Day Notice of Termination of Tenancy

To: _____

Tenant(s) in possession of the premises at _____

City of _____, County of _____, California.

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

Date: _____
Owner/Manager

PROOF OF SERVICE

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

- On _____, 200_, I delivered the notice to the occupant personally.
- On _____, 200_, I delivered the notice to a person of suitable age and discretion at the occupant's residence/business after having attempted personal service at the occupant's residence, and business if known. On _____, 200_, I mailed a second copy to the occupant at his or her residence.
- On _____, 200_, I posted the notice in a conspicuous place on the property after having attempted personal service at the occupant's residence, and business, if known, and after having been unable to find there a person of suitable age and discretion. (On _____, 200_, I mailed a second copy to the occupant at the property.)

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

Dated: _____, 200_.
Signature

