

SAN BENITO SUPERIOR COURT SELF HELP CENTER

450 Fourth Street, Hollister, CA 95023

RESIDENTIAL EVICTIONS: Unlawful Detainer Complaints

WHAT IS AN EVICTION?

An eviction is the legal process by which a landlord goes about removing a tenant from a rental unit. This process usually begins with a written notice. If the tenant does not comply with the notice, the landlord initiates an Unlawful Detainer action with the Court.

IMPORTANT THINGS TO KNOW:

It is extremely important that you follow the proper procedure for the eviction process. Doing something incorrectly may result in your case being dismissed! If this happens, you will have to start over (and pay a new filing fee). You may want to consult with an attorney who specializes in Landlord Tenant issues. If you choose to proceed without an attorney, take the time to carefully read through all the instructions.

CALIFORNIA TENANT PROTECTION ACT OF 2019:

The California Tenant Protection Act went into effect January 1, 2020. Before proceeding with an eviction, you must determine if this act applies to you. This act applies to all California residential tenancies where all tenants have lawfully resided at the property for 12 months or at least one tenant for at least 24 months **EXCEPT**:

- Buildings that have been built within the last 15 years **CC§ 1946.2(e)(7)**
- If there is a local ordinance for just cause evictions. **CC§ 1946.2(g)(1)(B)**
- Single-family owner-occupied residences where the owner rents no more than 2 bedrooms (includes accessory dwelling units). **CC§ 1946.2(e)(5)**
- Housing where the tenant shares bathroom or kitchen facilities with the owner who also occupies the residence as their principal place of residence. **CC§ 1946.2(e)(4)**
- Residential real property "that is alienable separate for the title to any other dwelling unit" (e.g. single family home on a single lot or a condominium) as long as it is NOT owned by a corporation, real estate trust, LLC with a corporate member – rental agreements must contain a notice with specific language of the exemption for agreements made on or after July 1, 2020. **CC§ 1946.2(e)(8)**
- Duplexes where the owner has occupied one of the units as a principal place of residency since the beginning of the tenancy. **CC§ 1946.2(e)(6)**
- Transient and tourist hotel occupancy. **CC§ 1946.2(e)(1)**
- Housing in a nonprofit hospital, religious facility, extended care facility or residential care facility for the elderly. **CC§ 1946.2(e)(2)**

- Student Dorms **CC§ 1946.2(e)(3)**
- Deed or regulatory restricted property (e.g. low-income housing) **CC§ 1946.2(e)(9)**

If your property falls into one of the exemption categories listed above, then you may evict a tenant without “just cause” as established by the act.

If your property is NOT covered by one of the exemptions listed above, then you may only evict if you have “just cause”. There are two types of just cause; at-fault, and no-fault. The basis for each is set out below.

At-Fault Just Cause:

- (A) Non-payment of rent
- (B) Material breach of lease
- (C) Nuisance
- (D) Destruction or waste of property
- (E) Tenant refusal to execute a written lease renewal or extension
- (F) Criminal activity on property
- (G) Unlawful subletting or assigning of property
- (H) Certain refusals to allow entry after notice
- (I) Use of property for animal fights or weapons/drug manufacture/trade
- (J) Refusals to vacate by terminated employees, agents, or licensees
- (K) Tenant fails to vacate after giving landlord written notice of intent to vacate.

If the just cause is curable, the tenant must be given prior notice and an opportunity to cure before being served with a 3 Day Notice to Quit.

No-Fault Just Cause:

- (A) Occupation by owner or immediate family (for leases after July 1, 2020 tenant must agree in writing)
- (B) Withdrawal of property from the rental market
- (C) Owner compliance with local ordinance or government agency or court order
- (D) Intent to demolish or substantially remodel the property.

The tenant is owed relocation assistance equal to one month’s rent (last month’s rent may be waived) unless an agency or court determines the tenant caused the conditions that require an order vacating the property. If you choose to pay the one month’s rent it must be paid within 15 days of giving the termination of tenancy notice. If it is not, then the notice to terminate is no longer valid. If you have complied with your obligations and the tenant fails to vacate the relocation assistance is recoverable as damages.

ENDING THE TENANCY:

An Unlawful Detainer action cannot take place in the Courts unless the tenancy has been terminated and the tenant remains in possession. Usually, this begins with the landlord serving the tenant with a written notice. A landlord may give a 3, 30, 60 or 90 day notice depending upon the situation. Before giving a notice, it is important to know if the tenancy is subject to the California Tenant Protection Act of 2019. What needs to be contained in the notice is governed by California Law. We have a separate informational sheet on notices to terminate.

In some instances, if the property is **exempt** from the California Tenant Protection Act, the tenancy may terminate without notice being given by the landlord. Some examples are; at the end of a fixed-term lease, when a tenant gives notice to terminate but does not leave, or when housing is provided as a condition of employment and the employment ends.

What type of notice you need is dependent upon the situation. It is important that you give the right type of notice, that it contains the right information, and that it is served correctly. If you make a mistake in the process, your Unlawful Detainer case may be dismissed by the court because your notice was defective.

If that happens, you will lose your filing fee and have to start over with a new notice. Make sure your notice meets the requirements before going forward.

WHEN DOES THE NOTICE EXPIRE?

To determine the expiration date of the notice, begin counting the day after the notice is served on the tenant. If you are dealing with a 3-day Notice then you will only count Court days and **exclude Saturday, Sunday, and Judicial Holidays**. When dealing with a 30- or 60-day notice, if the last day falls on a weekend or holiday, give the tenant until the end of the next business day to comply with the notice.

If more than one tenant was served with the notice, but not all on the same day, start counting the days only after the last tenant was served.

WHAT IF THE TENANT MOVES BEFORE THE EXPIRATION PERIOD?

You do not need to go through the Unlawful Detainer process. If the tenant owes you money, you may file a different type of lawsuit to get a judgment for the amount owed.

UNLAWFUL DETAINER PROCESS:

WHAT FORMS DO I FILE TO GET STARTED?

You need to complete and file the following forms for an Unlawful Detainer:

- Civil Case Cover Sheet (CM-010)
- Summons – Unlawful Detainer (SUM-130)
- Complaint – Unlawful Detainer (UD-100) and
- (optional) Prejudgment Claim of Right to Possession (CP10.5)

The forms are included in this packet and can be found at www.courts.ca.gov/forms by looking up the form numbers.

Instructions on filling out each of the forms are included in this packet. Read through the instructions carefully. They will walk you through each of the forms item-by-item.

MY FORMS ARE FILLED OUT, WHAT DO I DO?

Once the forms are completed and signed, make copies. You will need to make one copy for each tenant and one for yourself. The court will keep the original.

Bring all the copies and the originals to the Civil Clerk in the Hollister Courthouse to file.

At this time, you will either be required to pay the filing fee, which can vary from \$240 to \$435 depending on the total amount you are requesting or file the following forms to have this fee waived: FW-001 and FW-003. (FW-001-INFO explains how you qualify to have the fee waived.) If you are requesting the fee be waived and there are multiple plaintiffs, you must submit a fee waiver for each plaintiff.

The clerk will enter your case, assign a case number, and give you back your copies stamped with a "filed" date.

SERVING THE TENANT:

Your next step is to have each tenant served. You **CANNOT** do this yourself. You must have someone who is at least 18 years old and not named in the lawsuit serve copies on each tenant.

Once the tenant has been served the server must complete the bottom portion of the Proof of Service of Summons (POS-010). The top, or caption, will look like your other forms.

IMPORTANT: It is extremely important that service in an Unlawful Detainer lawsuit is done properly. If it is not, your case may be dismissed!

Service of the Unlawful Detainer complaint and summons must be done in the same manner as any other civil action.

- Generally, you must personally serve each tenant with a copy of the paperwork.
- If you have tried unsuccessfully to serve the tenant personally, read through the information in this packet on possible options for service. You will find this information on service starting on page 101 of the copied instructions.
- **IMPORTANT:** You may not post and mail the summons and complaint without an order from the Court.

If you think the tenant(s) may be hard to serve, you may want to consider hiring a process server.

If you believe there are people living in your rental unit and you do not know their names, you can include them as unnamed defendants by serving them a copy of the Prejudgment Claim of Right to Possession, along with the Summons and Complaint. See the handout included in this packet for more information.

THE TENANT HAS BEEN SERVED. NOW WHAT?

Once the tenant has been served, they have a limited time to file a response with the Court.

- If the tenant was personally served, they have 5 Court days to file an Answer. **Exclude Saturday, Sunday, and Judicial Holidays**
- If the tenant was served using substituted service, service is deemed complete the 10th day after mailing. The time for a response is 10 calendar days plus **5 Court days (Excluding Saturday, Sunday, and Judicial Holidays)**. This can be tricky to calculate, so be careful.

- For service in any other manner, please consult one of our references to calculate the proper time to wait.
- If a Prejudgment Claim to Right of Possession was served the time to file an Answer may also be affected.

No matter how many days you need to wait, day one begins the day AFTER the papers are served.

The day after the last day to file an Answer, check with the Court to see if one was filed.

For multiple tenants make sure you properly calculate the response deadline for each tenant. If you served different tenants at different times or in a different manner, then individual tenants may have varying response deadlines.

THE TENANT FILED AN ANSWER. WHAT DO I DO?

If the tenant files an answer, you must request the Court set a court date.

- Fill out a Request/Counter-Request to Set Case for Trial-Unlawful Detainer (UD-150).
 - In this form, you should list any days you cannot be available for trial within 20 days.
 - This form gets filled out and a copy mailed to the tenant **BEFORE** you file it with the court.
 - Read the instructions on page 2 of this form.
- You must have someone not a part of the case who is 18 or older mail this form for you. The person who mails it signs the proof of service on page two of the form.
- Once this form has been mailed to the other party, by someone else, they have 5 days to respond. Once they have responded or the 5 days have lapsed, you will receive a court date in the mail.
- Make sure you show up on time for your court date. If you are late, the Court will decide the case without you present.

THE TENANT DID NOT FILE AN ANSWER. WHAT DO I DO?

If the tenant has not filed an Answer, you will need to request a Default and Default Judgment from the Court. In order to quickly gain possession of the property, you first file a Default Judgment for possession only. You should do this as soon as possible after the time to answer has expired. Even if the time to answer has passed, the tenant may still file an answer if you have not entered a default.

This is done by filing three forms with the Court;
 Request for Entry of Default (CIV-100)
 Judgment (UD-110)
 Writ of Possession (EJ-130)

The clerk can issue a Default Judgment for Possession only. Then entry of the judgment allows you to ask the clerk to issue the Writ of Possession. The Writ is then taken to the Sheriff's Department. The Sheriff's Department will go out and post a final five day notice to vacate on the property.

Once you have possession of the property, you may request a Default Judgment for any money owed to you for back rent. The Default Judgment for money cannot include any costs not asked for in the complaint. If you discover there is damage to the property or other money owed, you must sue the tenant separately. If the amount you are seeking is \$10,000 or under, then this will be handled in Small Claims Court.

We have a separate packet that walks you through the default process.

GETTING ASSISTANCE:

Visit the Self Help Center located at the Hollister Courthouse. Call 831-636-4057 x104 to confirm hours. Please note due to the current complexity of Landlord Tenant Law the Self Help Center is providing limited assistance.

If you are over the age of 60 and rent out a single room in your residence, you may be able to get assistance from Senior Citizens Legal Services. They can be reached at 831-426-8824.

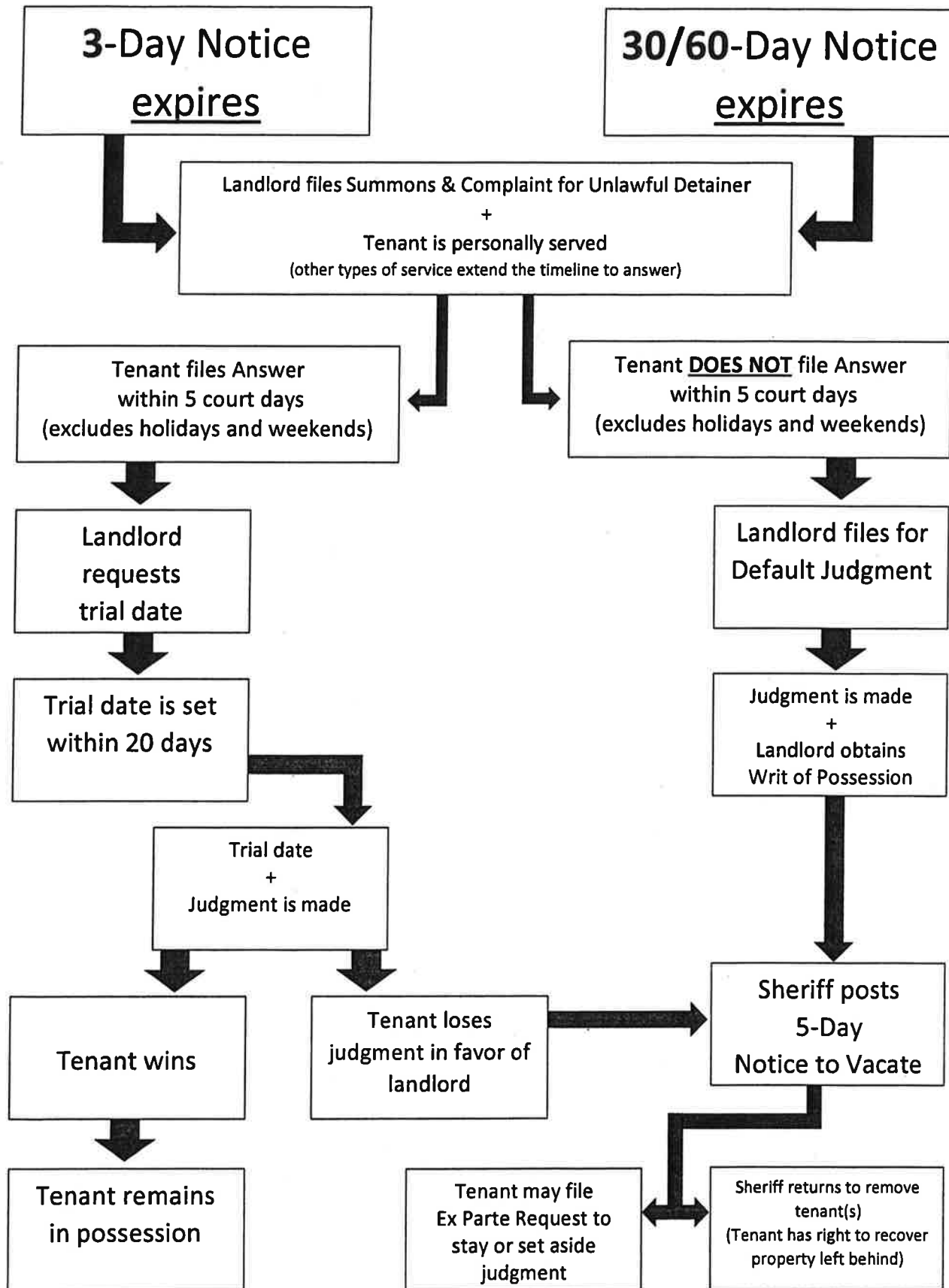
Lawyer Referral Service in Santa Cruz County provides ½ hour consultations at a nominal fee. They can be reached at 831-425-4755. Please make sure you tell them you are a San Benito resident.

FOR MORE INFORMATION:

Self Help legal books:

- *California Landlord's Law Book: Evictions*, by David Brown (Nolo Press)
- *California Landlord's Law Book: Rights and Responsibilities*, by David Brown, Janet Portman, and Ralph Warner (Nolo Press)

Standard Unlawful Detainer Timeline*



*The timeline of your case may differ depending on individual circumstance. Confirm the timeline of your case by speaking to the Self-Help Center or by seeking legal counsel.

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FORMS IN THIS CHAPTER

Chapter 6 includes instructions for and samples of the following forms:

- Summons—Unlawful Detainer—Eviction
- Complaint—Unlawful Detainer
- Civil Case Cover Sheet
- Proof of Service of Summons, and
- Application and Order to Serve Summons by Posting for Unlawful Detainer.

Appendix C includes copies of these forms, and the Nolo website includes downloadable copies of them. Appendix C also includes copies of the Civil Case Cover Sheet Addendum, Statement of Location, and statewide Prejudgment Claim of Right to Possession that are discussed in this chapter, but for which sample forms are not shown.

(See Appendix B for the link to the forms in this book, and other information on using the forms.)

After you have legally terminated your tenant's tenancy by properly serving the appropriate termination notice (or the tenancy has ended because a lease expired or the tenants terminated it themselves), you can begin an unlawful detainer lawsuit to evict the tenant. Chapters 2 through 5 provide the necessary forms and procedures to terminate a tenancy. The checklists included at the start of Chapters 2 through 5 are useful in understanding where you are in the process.




This chapter tells you how to prepare and file a complaint and summons, the documents that initiate your lawsuit.


How to Use This Chapter

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

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

Key to Symbols in This Chapter




-  Evictions based on nonpayment of rent—Three-Day Notice to Pay Rent or Quit (Chapter 2)
-  Evictions based on a 30-day or 60-day notice (Chapter 3)
-  Evictions based on lease violations, damage, or nuisance—Three-Day Notice to Quit or Three-Day Notice to Perform Covenant or Quit (Chapter 4)

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


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

Okay, let's start.

When to File Your Unlawful Detainer Complaint

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

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

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

Where to File Suit

All evictions are handled in California's Superior Courts. Most large counties divide their Superior Courts into "divisions" or "branches." (A notable exception is San Francisco, whose Superior Court has no divisions or branches.)

All California courts have websites. You can reach them by going to a central website: www.courts.ca.gov/find-my-court.htm. Once you get to this main website, you'll see links to the Superior Courts.

File your lawsuit in the division or district where the property is located. You can find nearly all the information concerning where to file, plus local court procedures, on the various courts' websites. Look through the website carefully. Busy courts no longer respond to telephone calls seeking general information, and many clerks' offices have reduced hours to the public. As a result, courts rely upon the websites to provide information to the public. Attempting to obtain information over the telephone can be difficult if not impossible.

Even for lawyers, correctly following court procedures is challenging. Court procedures are decidedly not "user friendly." Even lawyers frequently have to correct papers before filing, and courts make no official distinction between attorneys and people who represent themselves (described as "self-represented litigants"). However, because so many people act without an attorney, many courts maintain an online self-help center for people who represent themselves. The court will provide that information on its website.

Finally, resign yourself to the distinct possibility that you may have to go to the courthouse more than once before the clerk will accept your papers for filing. Clerks cannot give legal advice, but they might offer assistance concerning local procedures and point you towards local rules and assist you in how to fill out forms. Your chances for help will increase if you are polite and patient. Although court clerks exist to serve the courts, not the public, most clerks will go out of their way to help people if they can.

Preparing the Summons

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



FORM

Blank copies of the Summons—Unlawful Detainer—Eviction (Judicial Council form SUM-130) and Proof of Service of Summons (Judicial Council form POS-010) are included in the forms section (Appendix C) in the back of this book, and the Nolo website includes downloadable copies of these forms. (See Appendix B for the link to the forms in this book, and other information on using the forms.)

The form is filled out in the same way no matter what the ground for the eviction you are using.

Fill out the summons as follows.

Step 1: "NOTICE TO DEFENDANT _____."

You should name as defendants the following individuals:

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

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

Also, below the defendants’ names, type “DOES 1 to 5.” This phrase indicates that you are also naming unknown defendants in your lawsuit, just in case you later find out that there are unauthorized occupants living on the premises in addition to the known tenants. You can list a number greater or less than 5, but 5 fits the great majority of situations. If you are concerned that your tenant has been running a guesthouse or even a “hacker hotel,” you may wish to increase the number of potential unknown occupants.

Finally, the names and “Does” must exactly match the defendants’ line on the complaint. For example, if you name “Joe Tenant, Tina Tenant; Does 1 to 5” in the complaint, you must type it exactly the same way on the summons. We discuss this in more detail in “Preparing the Complaint,” Item 5.

Step 2: “YOU ARE BEING SUED BY PLAINTIFF

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

- If you are the sole owner of the property, you must be listed as plaintiff (but see fourth rule below).
- If there are several owners, they don’t all have to be listed—the co-owner who rented to the tenant, or who primarily deals with the manager, if there is one, should be listed.
- The plaintiff must be an owner of the property (such as your spouse) or have some ownership interest, such as a lease-option. A nonowner

manager or property management firm cannot be a plaintiff. (See C.C.P. § 367.) Some property managers and management companies have successfully brought unlawful detainer actions in their own behalf, without being called on it by a judge. Still, a competent tenant’s attorney may raise this issue on occasion and win, perhaps even getting a judgment against the manager or management company for court costs and attorneys’ fees.

- If the lease or rental agreement lists a fictitious business name (for example, “Pine Street Apartments”) as the landlord, you cannot sue (either under that name or under your own name) unless the business name is registered with the county. (See Bus. & Prof. Code §§ 17918 and following.) If the name is registered, list it as the plaintiff if the property is owned by a partnership. If you own the property alone but use the business name, put your name followed by “dba Pine Street Apartments.” (The dba means “doing business as.”) If the name isn’t registered, go down to the county clerk’s office and get the process started. This involves filling out a form, paying a fee, and arranging to have the name published. (More extensive information on how to handle fictitious business names can be found online. Simply type “fictitious business name [your county]” in your web browser search window, and most of the necessary information should come up.)

EXAMPLE 1: Jack Johnson and Jill Smith, a partnership named “Jack & Jill Partnership,” own a five-unit apartment building they call “Whispering Elms.” Their rental agreements list Whispering Elms as the landlord, and the name is properly registered with the county as a fictitious business name. They should enter “Jack Johnson and Jill Smith, a partnership, dba Whispering Elms” as the plaintiff.

EXAMPLE 2: Jill Smith owns the building herself, but her rental agreements list Whispering Elms as the landlord, and the name is on file with the county. The plaintiff in her eviction suit should be “Jill Smith, dba Whispering Elms.”

- If a corporation is the owner of the property, the corporation itself must be named as plaintiff and represented by an attorney. Even if you’re president and sole shareholder of a corporation that owns the property, unless you’re a lawyer you cannot represent the corporation in court. (*Merco Construction Engineers, Inc. v. Municipal Court* (1978) 21 Cal. 3d 724, 147 Cal. Rptr. 631.)

Step 3: (Item 1 on the form)

“The name and address of the court is _____.”

Put the name and street address of the court, “Superior Court of California,” the county, and the division or branch in which your rental property is located, if applicable. (See “Where to File Suit,” above.)

Step 4: “CASE NUMBER _____.”

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

Step 5: (Item 2)

“The name, address, and telephone number of plaintiff’s attorney, or plaintiff without an attorney, is _____.”

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

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

Step 6: (Item 3)

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

A nonattorney who is paid to fill out unlawful detainer paperwork must be registered and bonded. This law does not apply, however, to property owners or to managers who prepare such forms for their employers in the ordinary course of their duties (neither does it apply to attorneys). If you are such a property manager or owner, put an X next to the words “did not,” and leave Item 6, on the second page, blank (but complete the caption, as explained below).

If you are paying a paralegal or another person to fill out or otherwise process your papers (other than just having a process server serve them), or to advise you on filling out the forms, he or she must be registered with the county and bonded, and the “did” box must be checked. That person’s name, address, phone number, and registration information must then be listed on the next page of the summons form. Provide the information requested, and fill out the box at the top of the page by entering the plaintiff’s and defendants’ names, as you did at the top of the summons. You will need to file both pages of the summons, even if Page 2 is blank except for the caption (which will be the case for those who did not use an assistant).

Step 7: (Item 4)

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

This part of the summons is for the process server to complete. The server needs to identify the defendant as an individual or as someone who represents a business entity. In residential eviction proceedings, the defendant will always be an individual, so you should put an X in Box 4a. The process server will complete the rest of the form when he or she completes the service. (See below for more information on serving the summons and completing this part of the form.)

SUM-130

**SUMMONS
(CITACION JUDICIAL)
UNLAWFUL DETAINER—EVICTION
(RETENCIÓN ILÍCITA DE UN INMUEBLE—DESALOJO)**

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

Step 1

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

Step 2

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

Step 3

1. The name and address of the court is: SUPERIOR COURT OF CALIFORNIA,
(El nombre y dirección de la corte es): COUNTY OF LOS ANGELES,

110 N. Grand Avenue, Los Angeles, CA 90012

CASE NUMBER:
(Número del caso):

Step 4

Step 5

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
LENNY D. LANDLORD, 12345 Angeleno St., Los Angeles, CA 90010. 213-555-6789

Step 6

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

Date: _____ Clerk, by _____, Deputy
(Fecha) *(Secretario)* *(Adjunto)*

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

(SEAL)

Step 7

4. NOTICE TO THE PERSON SERVED: You are served

a. as an individual defendant.
b. as the person sued under the fictitious name of *(specify)*:
c. as an occupant
d. on behalf of *(specify)*:

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 CCP 415.46 (occupant) other *(specify)*:

5. by personal delivery on *(date)*:

Page 1 of 2

SUM-130

Step 8 PLAINTIFF (Name): LENNY D. LANDLORD

CASE NUMBER:

DEFENDANT (Name): TERRENCE D. TENANT, et al.

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

Step 9

a. Assistant's name:

b. Telephone no.:

c. Street address, city, and zip:

d. County of registration:

e. Registration no.:

f. Registration expires on (date):

Step 8: Complete the Caption on Page Two.

Enter the names of the plaintiff(s) and defendant(s), just as you did when filling out the top of the form on Page 1. Do so even if you won't be filling out Item 6 on this page (see instructions for Step 9).

Step 9: (Item 6)

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

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

Preparing the Complaint

In the unlawful detainer complaint, you allege why the tenant should be evicted. The complaint also formally requests a judgment for possession of the premises and any sums that you may be owed as back rent (in nonpayment of rent evictions), damages, court costs, and attorneys' fees. The original of your unlawful detainer complaint is filed with the court. A copy is given to (served on) each defendant along with a copy of the summons. (See "Serving the Papers on the Defendant(s): Service of Process," below.) Together, filing and serving the complaint and summons initiate the lawsuit.

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

Although many of these specific rent control requirements are listed in Appendix A, we can't detail all the rent control ordinance subtleties, and we can't guarantee that your ordinance hasn't been changed since this book was printed. Therefore, it is absolutely essential that you have a current copy of your ordinance and rent board regulations at the ready when you're planning an eviction in a rent control city.

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

**FORM**

A blank copy of the Complaint—Unlawful Detainer (Judicial Council form UD-100) is included in the forms section (Appendix C) in the back of this book, and the Nolo website includes a downloadable copy of this form. (See Appendix B for the link to the forms in this book, and other information on using the forms.)

Make single-sided copies of all pleadings. At one time, court forms were prepared as double-sided documents, but with greater use of electronic filing and scanning, double-sided copying might present difficulties. Using single-sided copies, although it consumes more paper, is a safer practice.



At the top of the form, type your name, address, and telephone number in the first box that says Attorney or Party Without Attorney. Your email address is optional, and we recommend that you fill it in. After the words "Attorney For," just put the words "Plaintiff in Pro Per," to indicate that

UD-100 Form updated 9/1/2020

The UD Complaint form was updated on 9/1/2020 to incorporate the California Tenant Protection Act (TPA). The instructions on the following pages have minor changes to them. Please incorporate these changes into the information on how to fill out this form.

Item 3: now has three parts instead of one.

3 a: list the address of the property including the county.

3 b: check the applicable box and list the name of the city or county.

3 c: list the approximate year the house/apt/condo was built.

Item 7: has changed. The old item 7 is now item 9.

For item 7 you must state whether your tenancy is subject to the Tenant Protection Act. Please refer to the info sheet section to see if this applies to you.

If it does not, then check the first box and then list the specific subpart for the exemption (you will find these listed in the info sheet).

If it is, check the box and fill out item 8.

Item 8: For tenancies subject to the TPA.

You must check the appropriate box for why the tenancy was terminated.

Item 9: Use the instructions for item 7 in the book. There are two changes to the notices listed.

(5) is a 3 day notice to perform or quit only for tenancies exempt from the TPA.

(6) is a 3 day notice to perform or quit for tenancies covered by the TPA. You must list the date the prenotice was served.

The rest of the items starting with 10 match up to the book starting with item 8.

This information is provided as a guide and is correct to the best of our knowledge. This is not intended as legal advice. It is your responsibility to verify that you are filing the right forms for your situation and following local procedure. We make no guarantees about the success of your case or the correctness of the information provided herein.

8/27/2020





you're representing yourself. In the second box, you will need to fill in the county, division, and court address, as you did on the front of the summons. In the third box, fill in the plaintiff's (your) and defendants' names in capital letters. As with the summons, leave blank the box in the upper right corner of the form which is for court use only. Also, leave blank the box labeled "CASE NUMBER."

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





If you want to name more defendants later, you can amend (change) your complaint and add the names of the new defendants in exchange for each of your fictional "Doe" defendants. However, you can only do this one time without the court's permission, and it is beyond the scope of this book to explain how to do so.

Put an X in the two boxes next to the words "ACTION IS A LIMITED CIVIL CASE" and the words "does not exceed \$10,000" (assuming the rent due is less than \$10,000). Do not check any other boxes in this area. This tells the clerk to charge you the lower filing fee (around \$240) for a case involving a relatively small amount of money. (If you don't check these boxes, or check the wrong ones, you could be charged \$385 to \$450.)

Item 1: PLAINTIFF and DEFENDANT Names

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

Item 2: Plaintiff Type





    **Item 2a:** State whether the plaintiff is an individual, a public agency, a partnership, or a corporation. If, as in most cases, the plaintiff is an adult individual—you—who is an owner of the

property, type an X in Box (1) next to the words "an individual over the age of 18 years."





Do not check the box next to the words "a partnership" unless you listed the partnership as the plaintiff on the summons. (See Step 2 in "Preparing the Summons," above.) Next, you'll need to complete and attach the Partnership Verification form. This is necessary because the partnership is the technical landlord and owner of the property, even though the partner or partners manage the property.

To complete the form, fill in the name of the general or managing partner and have that person sign the verification. Then, attach the verification to the complaint behind Page 3, before the exhibits and other attachments.

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





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

Item 3: Address of Rental Property

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

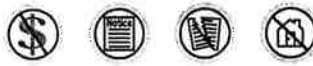
EXAMPLE: 123 Main Street, Apartment 4,
San Jose 95123 County of Santa Clara.

Item 4: Plaintiff's Interest

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

Item 5: Unknown Defendants

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

Item 6: Landlord and Tenant's Agreement

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

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

It's very common for tenants with leases to stay beyond the lease expiration date, with the full knowledge and blessing of the landlord. When the landlord continues to accept rent, these tenants become month-to-month tenants, subject to the same terms and conditions of the original lease. If the tenant you're evicting stayed on in this way, use the date that the original lease was signed. If you asked this tenant to sign a new lease when the old one expired (this is the better practice), use the date that the latest lease was signed, and refer to this lease for all other information that's called for in the complaint.

Then, on the same line, fill in the names of the persons with whom you made the oral agreement or who signed a written agreement or lease. In the case of an oral agreement, list the name(s) of the person(s) with whom you or a manager or another agent originally dealt in renting the property. Don't worry if the list of people with whom the oral or

written agreement was made does not include all the current adult occupants. Occupants who didn't make the original agreement are subtenants or assignees (see *The California Landlord's Law Book: Rights & Responsibilities*, Chapter 10) and are accounted for in Item 6c (below).

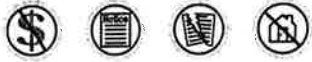
If some of the original tenants have moved out, they should not be listed in Item 6a, since you are not permitted to name them as defendants. You list here only those person(s) who entered into the rental agreement *and* still live in the property.

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

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

The boxes after Line "(2)" in Item 6a (beginning with the words "agreed to pay rent of") has a space for you to fill in the amount of the rent when the tenant originally rented the premises. If the rent has increased since then, say so in Item 6d (see below). Next indicate how often the rent was payable (again, when the tenancy began; changes since then should be indicated in Item 6d). In the rare cases where the rent was not payable monthly, put an X in the "other" box and type in the appropriate period (for example, weekly or bimonthly).

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



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

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



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



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

not sure whether the tenants are properly named in 6a, or should instead be listed in 6c, do what many attorneys do, as a catch-all: In 6c, check boxes (1) and (2) (subtenants and assignees), plus (3) (“other”—write in “co-occupants”). Don’t remove their names from 6a. Listing the occupants in both places classifies all the unknown occupants in one category or another.

If, however, some of the persons you named as defendants were not named in Item 6a (for example, adults who later moved in without your permission), check Box c and one of the three boxes below it to indicate whether these defendants are “subtenants” (usually) or “assignees” (rarely).

Here’s a brief explanation.

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

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

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

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

EXAMPLE: Lana rented one of her apartments to Toby and Toni five years ago. Three years ago,

Toby and Toni left and, without telling Lana, had Toby's cousin Todd move in. Although Lana could have objected under the rental agreement clause prohibiting subletting and assignment, she didn't. She accepted rent from Todd, but never had Todd sign a new rental agreement, so he's an "assignee" of Toby's and Toni's. In this situation, Lana would name only Todd as defendant, but list Toby and Toni as the persons in Item 6a to whom she originally rented. (This is true even though Item 6a asks you to list "defendants." Toby and Toni aren't actually defendants, because they no longer live there; the form isn't perfectly designed for every situation.) In Item 6c, you should check the "assignees" box to indicate that Todd, not named in 6a, is an assignee of the persons who are named.



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

EXAMPLE 1: Leon rented his property on a month-to-month basis to Teresa on January 1, 20xx, for \$800 per month. (This date and former rent amount should be listed in Item 6a.) On July 1, 20xx, Leon gave Teresa a 60-day notice (required for rent increases of more than 10%), that her rent would be increased from \$800 to \$900 effective September 1, 20xx. Leon should check Box d under Item 6 and after the words "The agreement was later changed as follows (specify):" type the following:

"On July 1, 20xx, Plaintiff notified defendant in writing that effective September 1, 20xx, the rent would be increased to \$900 each month."

EXAMPLE 2: Teresa's neighbor, Juan, moved into one of Leon's apartments on January 1, 20xx. On December 1, Leon told Juan his rent would go from \$650 to \$700, effective January 1, 20xx. However, Leon forgot to give Juan the required written 30-day notice to increase the rent. Still, Juan paid the increased rent for several months, beginning in January. Even though Leon should have raised the rent with a written notice, Juan effectively "waived" or gave up his right to a written notice by paying the increase anyway. (Note: This may not be true in a rent control city, especially if the increased rent exceeds the legal rent for the property.) Now, in June 20xx, Juan won't pay the rent (or move) and Leon has to sue him. Check Box d under Item 6 and type in the following:

"On December 1, 20xx, plaintiff notified defendant that effective January 1, 20xx, the rent due would be increased to \$700 each month, and defendant agreed to and did pay the increased rent on its effective date."

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

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

"On June 1, 20xx, after expiration of the lease term, defendant remained in possession and paid \$900 rent, which plaintiff accepted, so as to continue the tenancy on a month-to-month basis."

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

You may find that there isn't enough space on the complaint form to type in all the required information for this item. If you can't fit it in with three typewritten lines that go right up against each margin, type the words "see Attachment 6d" and add all the necessary information on a sheet of white typing paper labeled "Attachment 6d." This attachment is stapled to the complaint, along with the "Exhibit" copies of the lease/rental agreement and three-day, 30-day, or 60-day notice discussed below. (Be sure to add one more page to the number of pages listed in Item 1 if you do this.)



Item 6e: If the rental agreement is oral,

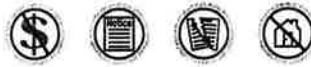
skip this box and Item 6f, and go on to Item 7. If the rental agreement or lease is in writing, put an X in this box if you have the original or a copy of it. Attach a photocopy (not a signed duplicate) of the lease or rental agreement to the complaint (unless you can't find an original or copy). Write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



TIP

If you're seeking to evict because of nonpayment of rent, you aren't legally required to attach a copy, but we think it's a good practice. If the tenant contests the lawsuit, the judge who hears the case will

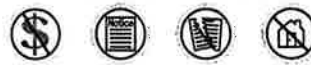
be more favorably impressed with the way you put your case together if you've taken the extra step to attach all relevant documents.



Item 6f: This question asks you to explain

why, if there is a written rental agreement or lease, you have not attached a copy of it to the complaint. (You're not required to do so in rent-nonpayment cases even if you have a copy, though we suggest that you do if you have one and leave this box unchecked.) If your rental agreement is oral, skip this item and go to Item 7. Also skip it if you are attaching a copy of the rental agreement or lease.

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




PLAINTIFF and DEFENDANT.


At the top of the second page of the complaint is a large box labeled "PLAINTIFF (Name)" and "DEFENDANT (Name)." Here, type in capital letters the names of the first-listed plaintiff and defendant the same way their names are listed on the front caption under "PLAINTIFF" and "DEFENDANT." Where there are multiple plaintiffs or defendants, you list only the first one here, followed by "et al."


Item 7: Notice




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



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


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

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

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

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

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




 **Item 7b:** List the date the period provided in your 30-day or 60-day notice expired. This




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






CAUTION




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

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

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




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

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


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

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




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): On Jan. 1, 20xx, plaintiff notified defendants in writing that effective Feb. 1, 20xx, the rent would be \$900.00 each month.
- 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):
- TERRENCE D. TENANT
- was served the following notice on the same date and in the same manner:
- (1) 3-day notice to pay rent or quit
 - (2) 30-day notice to quit
 - (3) 60-day notice to quit
 - (4) 3-day notice to perform covenants or quit
 - (5) 3-day notice to quit
 - (6) Other (specify):
- b. (1) On (date): August 8, 20xx the period stated in the notice expired at the end of the day.
- (2) Defendants failed to comply with the requirements of the notice by that date.
- c. All facts stated in the notice are true.
- d. The notice included an election of forfeiture.
- e. A copy of the notice is attached and labeled Exhibit 2. (Required for residential property. See Code Civ. Proc., § 1166.)
- f. One or more defendants were served (1) with a different notice, (2) on a different date, or (3) in a different manner, as stated in Attachment 8c. (Check item 8c and attach a statement providing the information required by items 7a-e and 8 for each defendant.)
8. a. The notice in item 7a was served on the defendant named in item 7a as follows:
- (1) by personally handing a copy to defendant on (date): August 5, 20xx
 - (2) by leaving a copy with (name or description):
 - a person of suitable age and discretion, on (date): _____ at defendant's
 - residence business AND mailing a copy to defendant at defendant's place of residence on
 - (date): _____ because defendant cannot be found at defendant's residence or usual
 - place of business. - (3) by posting a copy on the premises on (date): _____ AND giving a copy to a
 - person found residing at the premises AND mailing a copy to defendant at the premises on
 - (date): _____
 - (a) because defendant's residence and usual place of business cannot be ascertained OR
 - (b) because no person of suitable age or discretion can be found there. - (4) (Not for 3-day notice; see Civil Code, § 1946 before using) by sending a copy by certified or registered
 - mail addressed to defendant on (date): _____
 - (5) (Not for residential tenancies; see Civil Code, § 1953 before using) in the manner specified in a written
 - commercial lease between the parties.
- b. (Name): TERRENCE D. TENANT
- 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.

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


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




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

Item 8: Service of Notice

   This part of the eviction form asks for the details on how you performed service of process. You have a choice: You can complete Items 8a through 8c as explained below, or you can demonstrate your service compliance by checking Item 8d and supplying as Exhibit 3 a written, signed proof of service indicating when and how the notice was served. Which method is preferable? We suggest using Items 8a through 8c, because these questions

prompt you to give the detailed information (especially important in cases of substituted service or service by posting and mailing) that a judge needs to determine whether service was proper. Remember, if you have multiple defendants served different ways, you’ll need to add separate attachment pages for each. On the other hand, you may find it easier to simply check Item 8d and attach multiple proofs of service for multiple defendants who were served in different ways or on different dates, instead of filling out Items 8a–8c and adding separate attachments. Put an X in the box after 8a to indicate that a notice was served on your tenant.


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




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




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

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




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




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

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





   **Item 8b:** Put an X in this box and again list the name(s) of any defendant you served with a termination notice (as you did in Item 7a), only if all of the following are true: (1) There are two or more defendants, (2) two or more of the defendants both signed the written lease or rental agreement, and (3) you did not serve all of the signers of the lease or rental agreement with a notice. For example, Tillie Tenant and Terrence Tenant both signed the rental agreement, and although your Three-Day Notice to Pay Rent or Quit mentioned them both, you only served Terrence. (This is permitted under the case of *University of Southern California v. Weiss* (1962) 208 Cal. App. 2d 759, 769.) In that case, Item 7a

should list "Terrence Tenant" as the one served with a notice, Item 6f should not be checked and Item 8b should be checked. At Item 8b, "Terrence Tenant" should again be listed as the person who was served on behalf of the other tenant(s) on the lease or rental agreement.




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


   **Item 8d:** If you wish, you may check this box to indicate that instead of using Items 8a through 8c above to

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


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

Item 9: Expiration of Lease




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

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





Item 10: Rent Due

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





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

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

Item 11: Daily Rental Value

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

Item 12: Landlord's Right to Statutory Damages

    Statutory damages are damages that the landlord can recover if the judge finds that the tenant acted particularly badly (the code uses the word "malicious"). Judges rarely, if ever, give statutory damages, and for this reason, we recommend that you not check this box. If you were to check it, you'd be claiming that the tenant is being "malicious" in staying when he or she should leave, and you are asking for up to \$600 in punitive damages in addition to the rent. (The law does not allow you to ask for more. Before 1994, a landlord could recover "treble damages," or three times the rent the tenant owed, but now you can recover only \$600 if you can convince a judge the tenant acted maliciously.) If you do check this box, you must then add an Attachment 12 in which you state—in very specific detail—the acts of the tenant that you think show a malicious intent. Because only \$600 of a probably uncollectible judgment is at stake, because the requirements for alleging and proving malicious intent are very technical, and because judges seldom award these types of extra damages, we do not recommend seeking this sum. Also, demanding extra money based on the tenant's maliciousness may provoke a delaying response on the part of the tenant. You're almost always better off leaving Item 12 blank.

Rent vs. Damages

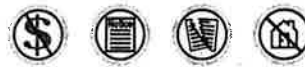
It's important to understand the legal difference between "rent" and "damages," because you'll need to list them appropriately on your complaint:

- Rent is money that the tenant owes you, a debt that arose before the three-day notice for the use of the premises expired. It includes unpaid rent up to that date, but nothing else.
- Damages arise during the period when the tenant deprives the landlord from taking back the property, after the termination notice expires and before the landlord gets a judgment from the court. For example, suppose that after you file the unlawful detainer action, the tenant remains in the apartment, up until the date of judgment. Your damages are the equivalent of the daily rent (called the daily rental value) from the date the notice expired through the date of judgment.

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

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

Item 13: Attorneys' Fees

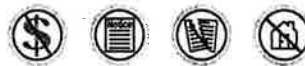


Put an X in this box only if you have a

written rental agreement or lease (a copy of which should be attached to the complaint—see Item 6e)—and it has a clause specifically providing that you (or the prevailing party in a lawsuit) are entitled to attorneys' fees. A clause referring only to "costs" or "court costs" isn't enough.

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

Item 14: Rent/Eviction Control Ordinance



This box should be checked only if your

property is subject to a local rent control law or just cause eviction ordinance. (See "Rent Control and Just Cause Eviction Ordinances" in Chapter 3 for a list.) When you put an X in this box, you declare under penalty of perjury that you have complied with all rent ceiling, registration, and other applicable requirements under the ordinance. Be sure you have. If you haven't, or if you're not sure, do some research. (Check your latest rent control ordinance. See Appendix A, California Rent Control Chart, for contact information.)

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

PLAINTIFF (Name): LENNY D. LANDLORD DEFENDANT (Name): TERRENCE D. TENANT, ET AL.	CASE NUMBER:
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- 9. Plaintiff demands possession from each defendant because of expiration of a fixed-term lease.
- 10. At the time the 3-day notice to pay rent or quit was served, the amount of rent due was \$ 900.00
- 11. The fair rental value of the premises is \$ 30 per day.
- 12. Defendant's continued possession is malicious, and plaintiff is entitled to statutory damages under Code of Civil Procedure section 1174(b). (State specific facts supporting a claim up to \$600 in Attachment 12.)
- 13. A written agreement between the parties provides for attorney fees.
- 14. Defendant's tenancy is subject to the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):
 City of Los Angeles, Rent Stabilization Ordinance, enacted April 12, 1979.

Plaintiff has met all applicable requirements of the ordinances.

- 15. Other allegations are stated in Attachment 15.
- 16. Plaintiff accepts the jurisdictional limit, if any, of the court.

17. PLAINTIFF REQUESTS

- | | |
|---|---|
| <ul style="list-style-type: none"> a. possession of the premises. b. costs incurred in this proceeding: c. <input checked="" type="checkbox"/> past-due rent of \$ 900.00 d. <input checked="" type="checkbox"/> reasonable attorney fees. e. <input checked="" type="checkbox"/> forfeiture of the agreement. | <ul style="list-style-type: none"> f. <input checked="" type="checkbox"/> damages at the rate stated in item 11 from (date): September 1, 20xx for each day that defendants remain in possession through entry of judgment. g. <input type="checkbox"/> statutory damages up to \$600 for the conduct alleged in item 12. h. <input type="checkbox"/> other (specify): |
|---|---|

- 18. Number of pages attached (specify): 3

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

- 19. (Complete in all cases.) An unlawful detainer assistant did not did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, state:)

<ul style="list-style-type: none"> a. Assistant's name: b. Street address, city, and zip code: 	<ul style="list-style-type: none"> c. Telephone No.: d. County of registration: e. Registration No.: f. Expires on (date):
--	--

Date: August 10, 20xx

LENNY D. LANDLORD
 (TYPE OR PRINT NAME)

▶ *Lenny D. Landlord*
 (SIGNATURE OF PLAINTIFF OR ATTORNEY)

VERIFICATION

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




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


Date: August 10, 20xx

LENNY D. LANDLORD
 (TYPE OR PRINT NAME)

▶ *Lenny D. Landlord*
 (SIGNATURE OF PLAINTIFF)

Item 15: Other Allegations

   This box does not have to be checked in cases based on standard three-day, 30-day, or 60-day notices. Some special situations may require additional allegations, as when terminating a Section 8 tenancy or terminating a resident manager. If you face such a situation, you are best advised to consult an attorney or experienced paralegal.

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





Attachment 15

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


**RENT CONTROL**

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

Item 16: Jurisdictional Limit of the Court

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


Item 17: Landlord's Requests



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

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





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

EXAMPLE 2: Louise Landowner served Tom Tenant with a three-day notice, demanding \$1,000 monthly rent that was due on July 15. Since this rent is due in advance, it covers July 15 through August 14. Louise should put the next day after that, August 15, 20xx, after "*(date)*" in Box f.

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





  Put an X in Box f only. In the space after the word “(date)” below Box f, list the *day after* the 30-day notice expiration date, or the *day after* the fixed-term lease expired. For example, if you or the tenant gave a 30-day notice on July 1, the last day the tenant could legally stay was July 31, and you list August 1, 20xx, here. Or, if the tenant’s lease expired on December 31, 20xx (and you didn’t accept rent after that), list the next day, January 1, 20xx.

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

    Do not check Box g unless you insist on asking for extra “statutory damages” of up to \$600 on account of the tenant’s malicious conduct, in which case you will have also checked Item 12. (Once again, we do not recommend doing this.)





    Do not check Box h.

Item 18: Number of Pages Attached

    List the number of pages to be attached to the complaint, counting each page of every copy of a rental agreement or lease (Exhibit 1) and





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

Item 19: Unlawful Detainer Assistant

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

Verification and Plaintiffs’ Names, Dates, and Signatures

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

    The two lines side by side above the word “Verification” are the first of two places to sign and type the name(s) of the plaintiff(s). The name

of each person who is listed on the complaint (and summons) as a plaintiff should be typed in the space to the left. Their signatures go on the space to the right. For more than one plaintiff, it's okay to either separate the names and signatures by commas, with all names on one line, or to list one above the other.

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



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

If a partnership is named as plaintiff, the verification printed on the form does not apply. Attach instead a form for the verification of a partnership. (See the form, “Verification of Partnership by Plaintiff,” in Appendix C.)

Preparing the Civil Case Cover Sheet

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

- Type your name, address, and telephone number in the box at the left top of the page,

and the court's name, including division, and address in the box below that.

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



FORM

A blank copy of the Civil Case Cover Sheet (Judicial Council form CM-010) is included in the forms section (Appendix C) in the back of this book, and the Nolo website includes a downloadable copy of this form. (See Appendix B for the link to the forms in this book, and other information on using the forms.)

In Los Angeles County, you'll also need to complete the Civil Case Cover Sheet Addendum and Statement of Location, which you'll file with your regular cover sheet. This form tells the court what kind of unlawful detainer action

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
LENNY D. LANDLORD
 12345 Angeleno Street
 Los Angeles, CA 90010
 TELEPHONE NO.: 213-555-6789 FAX NO.: 213-555-5678
 ATTORNEY FOR (Name): Plaintiff in Pro Per

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

CASE NAME: LANDLORD vs. TENANT

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
 JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--|---|--|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
<p>Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/W/D (23)
<p>Non-P/PI/D/W/D (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/W/D tort (35)
<p>Employment</p> <input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
<p>Real Property</p> <input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
<p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31)
<input checked="" type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
<p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20)
<p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
<p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|---|--|

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

Date: August 10, 20xx
 LENNY D. LANDLORD
 (TYPE OR PRINT NAME) Lenny D. Landlord
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

you're commencing (if the eviction is based on the tenant's drug use or sales, your case will proceed quickly), and why you've chosen this courthouse location. Complete the "Short Title" information at the top of each page by listing your name and the last name of the first defendant (for example, Landlord vs. Tenant). On the second page near the bottom of Column Two, check Box A6020 (Unlawful Detainer—Residential) or A6022 (Unlawful Detainer—Drugs). In Column Three, circle Reason 6 (the rental property should be within the area served by the courthouse you've chosen). On Page 4, under Item III, check Box 6 and include the rental property's address.



FORM

A blank copy of the Los Angeles form Civil Case Cover Sheet Addendum and Statement of Location is included in the forms section (Appendix C) in the back of this book, and the Nolo website includes a downloadable copy of this form. (See Appendix B for the link to the forms in this book, and other information on using the forms.) This form can also be filled out online at www.lasuperiorcourt.org/forms/pdf/LACIV109.pdf and printed.



TIP

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

Getting the Complaint and Summons Ready to File

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

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

1. unlawful detainer complaint (front facing you, on top)
2. attachments, in numerical order if there are more than one
3. Exhibit 1 (copy of written rental agreement if applicable (see Item 6e, above))
4. Exhibit 2 (copy of three-day, 30-day, or 60-day notice) if notice was served (see Item 7, above)
5. Exhibit 3 (copy of proof of service of the notice)

Fasten them with a paper clip for now.

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

- Make one copy of the complaint (together with attachments and exhibits) for your records, plus one copy to be served on each defendant (make extra copies if you think you may need to serve some occupants). The original will be filed with the court. Make sure to copy both pages of the complaint, using a one-sided copying process if possible.
- Make two copies of the summons for each defendant (and any occupants you think you may need to serve), and one for your records. For example, if you named three defendants in your complaint, make seven copies of the summons.
- Make one copy of the Civil Case Cover Sheet (or the Civil Case Cover Sheet Addendum and Statement of Location if your property is in Los Angeles County) for your records. Since this form is not served on the defendant, you don't need to make any more.

Filing Your Complaint and Getting Summonses Issued

To file your unlawful detainer complaint, follow these steps. (See the sidebar below for an alternative, however.)

Hire the Process Server to Do Most of the Work

For the sake of convenience and efficiency, most attorneys do not file their own papers in court. Instead, they use a service. Most registered process servers and legal service providers include court filing among their available services. These businesses know the courts and local filing procedures, and process servers will often bundle the initial complaint filing with service of the papers for an additional fee.

Servers or agencies can file the complaint, get the summons issued, and prepare the papers for service. They will often take care of minor form mistakes on the spot, eliminating repeated court trips. Of course, they also serve the papers and prepare the necessary proof of service and due diligence statement. Many services will also prepare the papers necessary to obtain a post-and-mail order if the tenant has been avoiding or “ducking” service.

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

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

Step 3: Give the clerk one copy of the summons per defendant and ask him or her to “issue” a summons for each. The clerk will stamp the court seal on each of these summonses and fill in the date of issuance; these are now original summonses, and the clerk will give them back to you.

Some courts no longer issue the original summons, but retain it and file it automatically. In that case, you serve a copy of the summons and file a proof of service using the Judicial Council

Proof of Service of Summons, Form POS-010 (available in Appendix C). In addition, the court may issue only one original summons for all defendants. The issuance of one original does not pose a problem, because each defendant receives only a copy of the summons, never the original.

Step 4: Give the clerk the other copies of the summons (remember, you will have two copies for each defendant), telling the clerk they are copies to be “conformed.” He or she will stamp them with the date, but not the court seal. Staple one of these summons copies to the front of each complaint copy. Both are to be served on the defendants at the same time. (The original summonses are returned to the clerk after the copies are served—see below.)

Step 5: Pay the court filing fee of around \$240, though the exact amount varies, depending on the county.

Serving the Papers on the Defendant(s): Service of Process

After you’ve filed your unlawful detainer complaint and had the summonses issued, a copy of the summons and of the complaint must be served on each person you’re suing. This is called “service of process,” and it’s an essential part of your lawsuit. The reason for this is simple: People who are being sued are constitutionally entitled to be notified of the nature of the lawsuit against them and how they may defend themselves.

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

If you don’t follow service rules to the letter, you lose. For example, a “shortcut” service of summons and complaint, where the papers are given to the first person who answers the door at

the property, instead of being properly handed to the defendant, is not valid. This is true even if the papers nevertheless are eventually given to the right person. (If the defendant cannot be found, the strict requirements of “substituted service”—discussed in “Substituted Service on Another Person,” below—including repeated attempts to personally serve, followed by mailing a second copy, must be followed.)

Who Must Be Served

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

Service on Unknown Occupants (Optional)

If you don't serve copies of the summons and complaint on everyone residing in the property as of the date you filed the complaint, the eviction may be delayed even after you've gotten a judgment and arranged for the sheriff or marshal to evict. That's because occupants who weren't served with the summons and complaint were never really sued in the first place. After you get a court order for possession and the sheriff posts the property with a notice advising the occupants they have five days to move or be bodily evicted, the unserved occupants can file a Claim of Right to Possession with the sheriff and stop the eviction until you redo your lawsuit to get a judgment against them. (C.C.P. § 1174.3.) Coping with this problem is difficult,

time-consuming, and beyond the scope of this book, and a lawyer is almost a necessity.

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



CAUTION

Consult with counsel if your eviction involves a foreclosed property. As of 2015, the Prejudgment Claim form asks you to indicate whether these unnamed occupants are residing in a foreclosed property. Foreclosure evictions, either by you or one begun by a previous owner from whom you've bought the property, involve additional tenant rights and complications, including extended notice periods. This area of the law is changing, and new procedures may affect your termination rights. You would be well advised to work with an experienced attorney in these situations. (See Chapter 11 of this book for further information.)

Even when a valid pretrial claim does not exist, the mere filing of a claim by any person will delay the eviction at least several days, if not

one or two weeks. For this reason, most attorneys automatically instruct the registered server to carry out the Prejudgment Claim of Right to Possession procedure. When this procedure is carried out, an unknown occupant will be less likely to file such a claim, since the threat of eviction is not as immediate as when the sheriff offers this opportunity only days before the actual eviction. (C.C.P. §§ 415.46, 1174.25.) This optional procedure may not be necessary if you have no reason to believe there are occupants of the property whose names you don't know and have no concern about a delay. Because only a sheriff, marshal, or private process server can serve the papers when you follow this procedure, the eviction may be more costly or proceed more slowly. Also, if you use this option, you will have to wait ten days from service, rather than the usual five, to obtain a judgment that would include unnamed occupants.



FORM

A blank copy of the Prejudgment Claim to Right of Possession is included in the forms section (Appendix C) in the back of this book, and the Nolo website includes a downloadable copy of this form. (See Appendix B for the link to the forms in this book, and other information on using the forms.)

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

Who May Serve the Papers: Process Servers

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

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

Some landlords prefer to have a marshal or deputy sheriff serve the papers to intimidate the tenant and give the impression, however false, that the forces of the law favor the eviction. Not all counties provide this service, however, and in those that do, sheriff's deputies and marshals are occasionally slow and sometimes don't try very hard to serve a person who is avoiding service by hiding or saying she is someone other than the defendant. To have a marshal or deputy serve the summons and complaint, go to the marshal's office or the civil division of the county sheriff's office, pay a \$35 fee for each defendant to be served, and fill out a form giving such information as the best hours to find the defendant at home or work, general physical descriptions, and so on.

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

Take care to serve the tenant well within 60 days of the filing of your complaint. By state law, the court has the power to dismiss your eviction lawsuit if the proof of service of the summons has not been filed with the court within 60 days of the filing of the complaint. The dismissal, if it happens, will be "without prejudice," which means that you can start over with a new lawsuit—but you will have lost time and money in the meantime. (Code of Civil Procedure § 1167.1.)

Marshals and Sheriffs

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

How the Summons and Complaint Copies Are Served



SKIP AHEAD

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

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

Remember that only copies of the summons, and not the originals with the court seals, should be served on the defendant. If you mistakenly serve the original, you'll have to prepare a Declaration of Lost Summons After Service, Judicial Council Form SUM-300.

Personal Service

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

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

Before personally serving the papers, the process server must check Boxes 4a and 5 on the bottom of the first page of the summons copies to be served and fill in the date of service in the space following Box 4. (See the sample summons in "Preparing the Summons," above.) It's better for the process server to fill the information in on the summons copy in pencil before service—so it can be changed later if service isn't effected that way or on that date. This is also less awkward than doing it right there just as you've located the angry defendant.

Some individuals have developed avoidance of the process server into a high (but silly) art.

It is permissible, and may be necessary, for the person serving the papers to use trickery to get the defendant to open the door or come out of an office and identify him- or herself. One method that works well is for the process server to carry a wrapped (but empty) package and a clipboard, saying he or she has a “delivery” for the defendant and requires the defendant’s signature on a receipt. The delivery, of course, is of the summons and complaint. If all else fails, your process server may have to resort to a “stakeout” and wait for the defendant to appear. It’s obviously not necessary to serve the defendant inside his or her home or workplace. The parking lot is just as good.

When serving more than one defendant, it’s sometimes difficult to serve the remaining defendant after having served one. For example, if one adult in the family customarily answers the door and is served the papers, it’s unlikely that she will cooperate by calling the other defendant to the door so that your process server can serve that person too. So, when one person answers the door, the process server should ask whether the other person is at home. Usually the defendant who answers the door will stay there until the other person comes to the door—at which time your process server can serve them both by handing the papers to each individual or laying them at their feet.

Substituted Service on Another Person

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

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

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

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

Post Office Boxes

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

EXAMPLE: You name Daily and Baily as defendants. When your process server goes to serve the papers, only Daily is home. He serves Daily personally. Baily, however, has to be served before you can get a judgment against him. Two more attempts to serve Baily fail, when Daily answers the door and refuses to say where Baily is. The process server uses the

substituted service technique and gives Daily another set of papers—for Baily—and mails still another set addressed to Baily. Service is not legally effective until the tenth day after giving the papers to Daily and mailing a second copy of the papers to Baily. This means that you'll have to wait these ten days, plus the five day "response time," (see "What Next?" below) for a total of 15 days, before you can take a default judgment against Baily.

Before serving the papers by substituted service, the process server should check Box 3 on the bottom front of the summons copy and also check the box next to "CCP 416.90 (individual)" and should write in the name of the defendant served this way (not the person to whom the papers are given) after the words "On behalf of." Of the boxes below Box 3 and indented, check the box labeled "other" and add "C.C.P. § 415.20" after it to indicate that substituted service was used.

Although the three unsuccessful attempts necessary to use substituted service can be made at the tenant's home and/or work, it's best to try the tenant's home only. Serving someone at their place of employment can create unnecessary hostility, and should be used as a last resort.

A sample Declaration re Reasonable Diligence for Substituted Service of Summons on Individual form is shown below.

If the process server plans to serve a Prejudgment Claim to Right of Possession (see "Service on Unknown Occupants (Optional)," above), the server should check Box c next to the words, "as an occupant," and also Box d, next to "CCP 415.46 (occupant)."

The process server must fill out the Proof of Service of Summons and sign and date a declaration detailing his or her attempts to locate the defendant for personal service. This declaration is attached to the original summons. A sample is shown below.

"Posting-and-Mailing" Service

Occasionally, a process server isn't able to use either personal or substituted service to serve a defendant with copies of the summons and complaint. For example, if your tenant lives alone and is deliberately avoiding service, and you don't know where he works (he's no longer at the job listed on his application several months ago), the law provides that your process server can post copies of the summons and complaint on his front door and mail a second set of copies.

As with substituted service, this "posting-and-mailing" method also gives the defendant an extra ten days to file a response with the court, and so ten more days (total of 15 days) must go by before you can get a default judgment.

Posting and mailing can be more complicated than it looks, and we strongly recommend that you let a process server or a lawyer handle it. There are just too many ways to make a mistake, and, if you do, your whole lawsuit will fail.

Before you can use posting and mailing, you must get written permission from a judge. Your process server must show that he or she has made at least two, and preferably three or four, unsuccessful attempts to serve the papers at different and reasonable times. For example, an attempt to serve an employed defendant at home at noon on a weekday, when she would most likely be at work, isn't reasonable. Attempts to serve at unreasonable hours may subject you to legal liability for invasion of privacy or intentional infliction of mental distress—another good reason to let someone experienced handle it. However, a sample form for Los Angeles (Application and Order to Serve Summons by Posting for Unlawful Detainer) for getting permission from a judge for this type of service is shown below. Keep in mind, though, that this sample should be adapted to your own situation.

**FORM**

A blank copy of the Los Angeles form **Application and Order to Serve Summons by Posting for Unlawful Detainer** is included in the forms section (Appendix C) in the back of this book, and the Nolo website includes a downloadable copy of this form. (See Appendix B for the link to the forms in this book, and other information on using the forms.) Also, the Los Angeles County version of this form can be filled out online at www.lasuperiorcourt.org/forms/pdf/LACIV107.pdf, and printed.

Filling Out the Proof of Service of Summons Form

Once the process server has served the copies of the summonses, the server must fill out a “Proof of Service of Summons” form and staple it to the original summons. (Remember, there is one original summons for each defendant.) If you use a sheriff, marshal, or registered process server, that person should do this for you. So, even where two or more defendants are served at the same time and place by the same process server, two separate Proofs of Service should be filled out. When this form is filled out and returned to the court clerk (see Chapter 7), it tells the clerk that the tenant received notice of the lawsuit, an essential element of your lawsuit. Here’s how to complete the Proof of Service of Summons (a sample is shown below). The process server must fill out a Proof of Service of Summons for each defendant.

**FORM**

A blank copy of the **Proof of Service of Summons (Judicial Council form POS-010)** is included in the forms section (Appendix C) in the back of this book, and the Nolo website includes a downloadable copy of this form. (See Appendix B for the link to the forms in this book, and other information on using the forms.)

In the box at the top of the form, fill in the plaintiff’s and defendant’s names, and leave blank the box entitled “case number.”

Item 2: Check the box next to “complaint.” If a sheriff, marshal, or registered process server served a Prejudgment Claim of Right to Possession using the optional procedure discussed above, that person should also check the box next to “other (*specify documents*)” and add, “Prejudgment Claim of Right to Possession.”

Item 3a: Type the name of the defendant for whom this summons was issued and on whom the copies were served.

Item 3b: Leave this box blank (it’s for the unlikely event that your tenant has a designated agent who will accept service of process).

Item 4: Type the address where the defendant (or the person given the papers by substituted service) was served.

Item 5: If the defendant was personally served, check Box a and list the date and time of service on the same line in Subitems (1) and (2).

If the defendant was served by substituted service on another person, check Box b, list the date and time the papers were given to this other person, and type the name of that other person in the space just below the first two lines. If you don’t know the name of that person, insert the word “co-occupant,” “coworker,” or whatever other word (such as “spouse of defendant”) describes the relationship of the person to the defendant. Check the box in Subitem (1) or (2) to indicate whether the papers were left with this other person at the defendant’s business or home. Then, indicate in Subitem (4) the date that additional copies of the summons and complaint were mailed to the defendant (at the home or business address where the papers were left), and the city (or nearest post office branch) from which the second set was mailed. Do not check Subitem (3), but do check Subitem (5). Be sure to attach the original Declaration re Reasonable Diligence for Substituted Service of Summons on Individual signed and dated by the process server, to the Proof of Service of Summons.

If you used service by posting and mailing, after getting permission from a judge, check Box d on the

<small>NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY OR PARTY WITHOUT ATTORNEY:</small> LENNY D. LANDLORD 12345 Angeleno Street Los Angeles, CA 90010 Tel: 213-555-6789 <small>ATTORNEY FOR (Name):</small> Plaintiff in Pro Per	<small>STATE BAR NUMBER</small> _____	<small>Reserved for Clerk's File Stamp</small>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES		
<small>COURTHOUSE ADDRESS:</small>		
110 N. Grand Avenue, Los Angeles, CA 90012		
<small>PLAINTIFF:</small>		
LENNY D. LANDLORD		
<small>DEFENDANT:</small>		
TERRENCE D. TENANT, TILLIE D. TENANT		
APPLICATION AND ORDER TO SERVE SUMMONS BY POSTING FOR UNLAWFUL DETAINER		<small>CASE NUMBER:</small> A-123456-B

1. I am the plaintiff plaintiff's attorney other (specify): _____

2. I apply for an order pursuant to Code of Civil Procedure section 415.45 to permit service by posting of the summons and complaint on defendant(s). *Specify name(s):* _____
 Terrence D. Tenant, Tillie D. Tenant

3. The complaint seeks possession of property location at: 6789 Angel St., Apt. 10, Los Angeles, Los Angeles County, California. The property is residential commercial.

4. The notice to quit, or pay rent or quit, was served by: personal service substituted service posting and mailing other (specify): _____

5. At least three attempts to serve in a manner specified in Code of Civil Procedure, Article 3, (other than posting or publication) are required. List attempts to serve, if made by declarant, or attach declaration(s) of process server(s) stating attempts to locate and serve the defendants. If service not made, please explain.

DATE	TIME	REASON SERVICE COULD NOT BE MADE/REMARKS
8/10/xx	5:30 p.m.	Minor daughter answered through door, refused to open and said her parents were not home.
8/12/xx	3:00 p.m.	Defendant not present at place of employment, manager said fired two weeks earlier.
8/13/xx	7:15 p.m.	No one answered the door, though lights on and both defendants' vehicles in driveway.

Declaration(s) of process server stating attempts to locate and serve the defendant(s) is attached and incorporated into this application by reference

POS-010

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

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

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (served in complex cases only)
 - e. cross-complaint
 - f. other (specify documents):
3. a. Party served (specify name of party as shown on documents served):
 TERRENCE D. TENANT
 - b. Person (other than the party in Item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served: **6789 Angel Blvd., Apt. 10, Los Angeles, CA 90010**
5. I served the party (check proper box)
 - a. **by personal service.** I personally delivered the documents listed in Item 2 to the party or person authorized to receive service of process for the party (1) on (date): **Sept. 19, 20xx** (2) at (time): **6 PM**
 - b. **by substituted service.** On (date): _____ at (time): _____ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): _____ from (city): _____ or a declaration of mailing is attached.
 - (5) I attach a declaration of diligence stating actions taken first to attempt personal service.

second page and after the words “by other means (specify means of service and authorizing code section)” enter the words “C.C.P. § 415.45 pursuant to Court’s order, by posting copies of summons and complaint on front door to premises at [*list full street address*] on [*list date posted*], and mailing copies thereof on [*list date of mailing, or words “same date” if applicable*] by certified mail addressed to defendant at that address.”

Item 6: The alphabetical boxes here (a through d) are the same as those on Item 4 on the front of the summons (however, Box d includes more options).

If personal service was used, check Box a.

If substituted service was used, check Box c, and also the box next to “CCP 416.90 (authorized person).” Also type the name of the defendant served by substituted service (not the one to whom the papers were given) on Line c.

For posting-and-mailing service, check Box a.

Items 7–9, Date and Signature: In the spaces below Item 7, list the home or business address and telephone number of the process server. Next to “The Fee for Service,” list the amount you paid, if applicable, to the person who served the summons. Check Box 1 to indicate that this person is not a

registered process server. (If you do use a registered process server, they will fill out the Proof of Service of Summons for you.) Do not check Box 2 unless the person who served the papers is an attorney or licensed private investigator, or an employee of either. Then, check Box 8 and have the person who served the papers date and sign the Proof of Service of Summons at the bottom. Do not check Box 9.

What Next?

Tenants have two choices after being properly served with your summons and complaint: They can do nothing and lose automatically (in legalese, default), or they can fight the suit. They must decide what to do within five days (15 days if they weren’t personally served with the summons and complaint).

If the tenant doesn’t file some kind of written response with the court within five days, you can get a default judgment by filing a few documents with the court. No court hearing is necessary. Chapter 7 tells you how to do this.

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