



CENTRAL CALIFORNIA
LEGAL SERVICES
JUSTICE. EQUITY. POWER.

Homelessness Prevention Project

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Homelessness Prevention Project (HPP)

A Project of:

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EVICTIION PROCESS AKA UNLAWFUL DETAINERS





OVERVIEW OF EVICTION PROCESS

- Tenant Receives a Notice from Landlord
- When Tenant doesn't leave or cannot respond to Notice after it expires, Landlord files Unlawful Detainer ("UD")
- After Filing, Landlord must serve Tenant with UD
- Tenant has 5-Court Days to file an answer
- After Answer, normal court process before trial
- Trial is set within 20 days of request for trial
- Trial occurs and judgment is entered





OVERVIEW OF EVICTION PROCESS (CONT.)

- If tenant loses, then Landlord obtains Writ of possession and goes to Sheriffs
- Sheriffs take Writ of Possession and then post Notice to Vacate
- Tenant has until the date listed on the Notice to Vacate to be out of the property
- Sheriffs will arrive at an unknown time that day and lock the tenant out of the property
- Tenant has 15 days to retrieve any property still remaining on the property
- If tenant won at trial, they continue on property as normal but may owe back rent





NOTICE

The first step to nearly every Eviction is receiving some type of notice.

- If there is an issue with the notice, it can potentially be challenged
- Although the UD process favors the landlord, the landlord cannot make any mistakes or the tenant can win the case.
- For more specific questions on notices, we have a separate presentation, which can be scheduled again, if needed





FILING AND SERVING A UD

The next step requires the landlord to file a UD and then serve the tenant with the Summons and Complaint (“S&C”)

- Service must meet specific requirements
- Service must be either in person or substituted service to another adult on the property who can give the S&C to tenant
- Service cannot be done by the Landlord themselves. It must be someone who is not a party and over the age of 18. Proof of service will be filed





SPECIAL EXCEPTION ON SERVICE

- A landlord can potentially serve by posting and mail instead of in person or by substituted service
- This method requires the consent of the court
- Landlord must seek permission before they can serve this way or they have not properly served the tenant
- Once permission is given the landlord then posts the S&C in a prominent place it can be seen while also mailing a copy of the S&C to client as well





TENANT FILING THEIR ANSWER

Once served, the tenant has a limited amount of time to file an answer before a default judgment is entered against them.

- If the tenant was personally served, they have 5 Court Days to file an answer
- Court days do not include weekends or court holidays
- Generally, this is one week from the date served as you begin counting the first day after service (i.e.: if a person is served on Monday, the answer is likely due Monday the following week)





TENANT FILING THEIR ANSWER (CONT.)

A number of other factors can affect time to answer:

- If the tenant was not personally served, they have additional time to answer
- The way to calculate the additional time depends on method of service
- If substituted service, add 10 calendar days before then counting the 5 court days to answer
- If by post and mail, add 10 calendar days after both have occurred before then counting the 5 court days to answer
- Mailing is date mailed, not day received





DEFAULT JUDGMENT

If a tenant does not file in time, the landlord can enter what's called a default judgment and automatically win against the client

- Landlord will then follow process as if they won at trial
- Tenant can only fight this process if they file a set aside which has a bunch of its own requirements
- Tenant is fighting against both the clock and strong requirements if attempting to set aside judgment





THE ANSWER ITSELF

The default method of filing an answer is to use the UD-105 form.

- UD-105 contains a list of most of the defenses available to a tenant
- Answer is where you clearly label what defenses or facts you are contesting
- Generally, should be as brief but clear as possible in listing facts
- If too long, judge is less likely to read everything or even, potentially, read any of it





MOST COMMON DEFENSES

Here are some of the most common defenses:

- Breach of the Duty of Habitability in rent cases only
- Issues with the type of notice
- Factual disputes, whether about claims about events that occurred or facts contained within the notice
- Waiver of the notice
- Tenant Protection Act violations
- Retaliation for reporting issues to Code Enforcement (CE)





BRIEF OVERVIEW OF DEFENSES DUE TO COVID-19 PROTECTIONS

These defenses only apply if COVID-19 rent is an issue:

- For rent between March 1, 2020 and September 30, 2021, if the person qualifies, they can file a UD-104
- That the tenant actually already submitted a declaration in response to the specific notice they received
- That the landlord did not submit a request for rental assistance if the case was filed before April 1, 2022
- Improperly applied rent paid during the COVID-19 protected period





NON-STANDARD FILINGS IN RESPONSE TO A SUMMONS AND COMPLAINT

For awareness purposes, there are other filings that can be filed but they require a lot more legal knowledge and would recommend only filing if an attorney is involved.

- Motion to quash: there was an issue with the service of the S&C
- Demurrer: a special response where you are essentially claiming that even if everything in the plaintiff's complaint is true, they still would not win
- Both responses do not have generic forms like UD-105 and are required to follow all relevant writing requirements set by the court





NORMAL COURT PROCESS

After the answer but before the trial, the court follows the normal procedures for a civil case.

- Requests for discovery can be submitted and need to be answered
- Relevant motions may be filed
- A request for trial or jury trial may be filed
- Upon request for trial, a trial will be set, usually, within 20 days of the request





TRIAL

Unless specifically requested, most trials are bench trials where the judge will serve as the person who decides

- Trials follow the standard rules of procedure, although they may be partially relaxed for people representing themselves
- Although relaxed, the judge is much more limited in their ability to act than in something like Small Claims Court
- Civil case standard of preponderance of the evidence (more likely than not)





GENERAL TRIAL ADVICE

- For all pictures, documents, or anything else, bring 3 copies with you to court. One for you, one for the judge, and one for opposing counsel
- Trial will first proceed with the plaintiff bringing their case to the judge
- Plaintiff will call their witnesses, proceed with their testimony, including admitting any relevant evidence.
- Afterward, defendant will proceed to do the same and call any relevant witnesses for their case





GENERAL TRIAL ADVICE (CONT.)

- Try to keep all comments relevant to the specific defenses you have raised
- Have multiple pieces of evidence for your claims
- Bring witnesses, if possible
- If pictures are relevant, they tend to be very powerful for a lot of case types as they provide visual proof of your claims
- The same applies to copies of emails, letters, or other written communication that you can use to prove your claims





NEGOTIATION

Often the plaintiff or plaintiff's counsel will be willing to enter into a settlement agreement instead of going to trial

- Most common settlement agreement is a move out agreement
- Move out agreements are agreements to move out by a specific date. There are no extensions to this time
- Other settlements may be based on a payment schedule
- If you violate a settlement agreement, the case is over for you and you will be evicted





JUDGMENT

After trial, the judge or jury will enter a judgment for one of the parties

- If the judgment is in favor of the tenant, that is the end of the case. Tenant may still owe back rent
- If landlord wins, then they will move to get a document called a Writ of Possession
- The Writ of Possession allows the landlord to go to the sheriffs to start the lockout process
- It is rare to overturn a judgment once it has been entered





LOCKOUT PROCESS

The county sheriffs are the only people who can initiate a lockout of a tenant. They have a specific process they follow

- The first part of the process, after they receive a copy of the Writ of Possession is to schedule an officer to go out to the property and post a Notice to Vacate
- Notice to Vacate tells the tenant of some of their rights and informs them of the date they must be out by
- Tenants must be out by that date as the sheriffs will remove the tenant from the property





DEFAULT JUDGMENT

If a tenant does not file their answer within the required answering period, usually 5 court days, then a default judgment will be taken against them.

- A default judgment acts like a normal judgment in almost all ways
- Landlord will get Writ of Possession and sheriffs will lockout tenants based on this
- Only method to solve this issue is to file a Motion to Set Aside





POST JUDGMENT

If a judgment has been entered, a tenant has few options:

- A Motion to Stay Execution can potentially buy either 40 days or 100 days from the date judgment is entered
- A Motion to Set Aside can be used to set aside a default judgment entered against a tenant
- Tenant can also potentially appeal the case but they have either 30 or 90 days to appeal, depending on certain facts
- Details on motions to be provided next presentation





QUESTIONS AND ANSWERS





THANK YOU FOR JOINING US!

Homelessness Prevention Project

a Project of

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