California Eviction Defense:
Protecting Low-Income Tenants 2017

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Introduction to Unlawful Detainers (PowerPoint slides)

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If you find this article helpful, you can learn more about the subject by going to www.pli.edu to view the on demand program or segment for which it was written.

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Introduction to Unlawful Detainers-PLI

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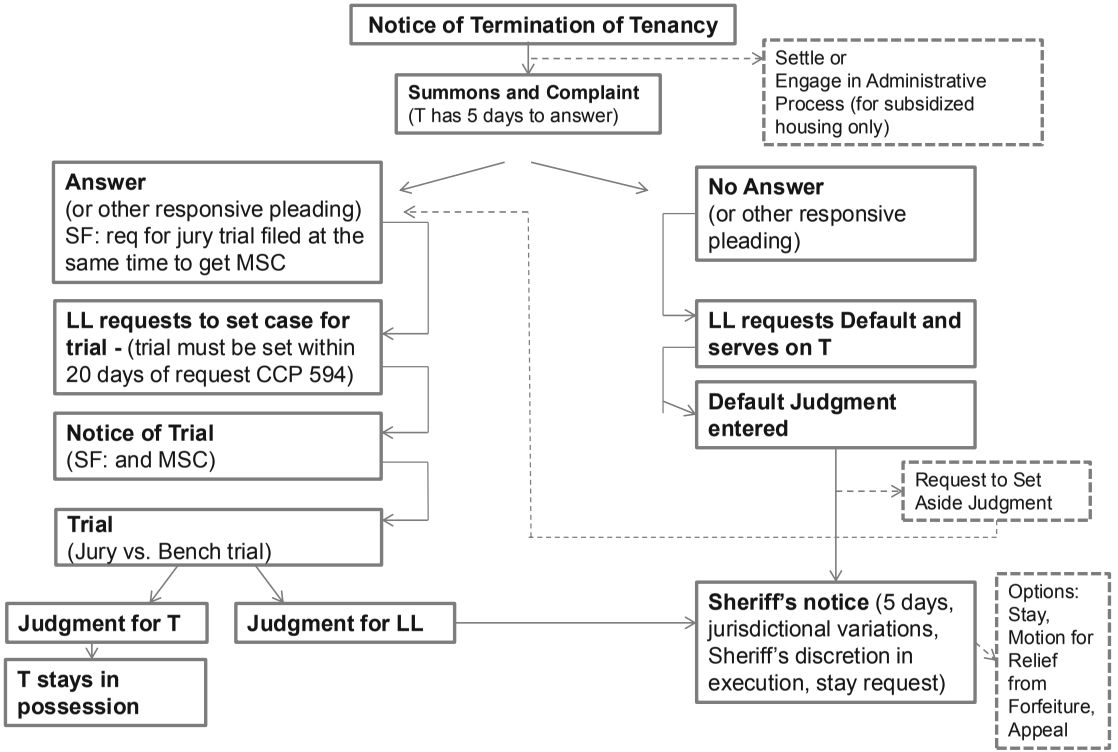
UD Process and Timelines



UD Timeline

- Summary proceeding:
  - Notice: is served and expires → Unlawful Detainer complaint is filed.
  - Unlawful Detainer Summons & Complaint: is served by Landlord on Tenant
  - Response: 5 days to respond to complaint. CCP 1167. (weekends count as part of the 5 days; if the 5th day lands on a holiday, must respond by next calendar day).
  - Discovery: 5 days to respond and must be completed 5 days before the trial date. CCP 2025.270(b); 2030.020; 2024.040(b).
  - Trial: must be set within 20 days after "at issue memorandum" is filed (i.e. request to set for trial). CCP 594.

Local Court Rules

San Francisco:

- SF mandatory settlement conferences (MSC): held the week before trial, date set by the court after LL requests trial date, can get sanctioned for failure to attend an MSC (at least in theory)
- SF: certain motions are heard only on certain days

San Bernardino

- San Bernardino County, motions are heard Mondays through Fridays.
- No mandatory settlement conferences in Inland Empire-court sets an OSC re status approximately 1 1/2 month after answer filed.
- Court mediator tries to settle cases between self-represented litigants on day of trial.

Orange County

- OC: there are three different courts that hear unlawful detainers and trial, motion, and ex partes having different times and days:
- Here is the link to our three courts. http://www.occourts.org/directory/civil/limited-unlimited-civil/calendars/schedule.html

Rent Control Jurisdictions

Local ordinances may have additional procedural and substantive requirements.

Types of Notices

- 3-Day Notice– pay rent or quit, nuisance, unlawful purpose. CCP 1161
- 14-Day Notice – public/subsidized housing pay rent or quit
- 30-Day Notice – month to month tenancy-less than 1 year. ***At-will tenant-one who does not pay rent.***
- 60-Day Notice – termination of lease at the end of lease term if tenancy is longer than 1yr. CCP 1161
- 90-Day Notice – subsidized housing (Sec. 8) termination of tenancy by LL without cause at end of lease. CCC 1954.535
- 90-Day Notice – tenants of foreclosed property must be given 90 days notice to quit before removal. CCP 1161b
- 1 year notice – Ellis Act
- Combo notices – 3dn and 60dn served consecutively
- Service of notice: Personal, substitute (leaving with someone at the unit of suitable age and mailing), posting and mailing.

Notice Requirements

- Basic notice requirements:
  - amounts due, name and telephone number and address of person to whom rent payment shall be made and if personally, days and hours to make payment.
  - Notice is for rent due within past 12 months. CCP 1161(2)
- Additional requirements for certain tenancies (subsidized housing, rent control)

Complaint

- Complaint

  See Sample Complaint-Judicial Council Forms, SUM-130/UD-100

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
[redacted]

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
[redacted]

SUM-130

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

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
[redacted]
Clerk of the Superior Court
By Monique Ramirez,Deputy Clerk

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 está cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito). Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.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.

1. The name and address of the court is:
   (El nombre y dirección de la corte es):
   SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
   HARBOR JUSTICE CENTER, NEWPORT BEACH FAC
   4601 JAMBOREE RD. #104

CASE NUMBER:
(Número del caso
[redacted]

QUIZ

- Mr. and Mrs. Jolie-Pitt came into your office in a panic. They received a 30 day Notice to Quit from Mr. Landlord. They have 6 minor children and have been living in the property for 2 years on a month to month lease. What is your advice to them?

a. It's a month to month lease so they must move before the expiration of the 30 days.
b. Since they have lived at the property for over 1 year, they should receive a 60 day notice and the notice is invalid.
c. They should move right away. They have the money.

Complaint Defects?

- Lease and other documents incorporated into the lease must be attached unless eviction is for non-payment of rent.

Service of process

- Personal service: personally served, the person serving the notice must hand you the notice (or leave it with you if you refuse to take it) CCP 1162(1); or,
- Substituted service: if the landlord cannot find the tenant at home, the landlord should try to serve at work but if LL cannot find either place, then the notice must be left with a person of “suitable age and discretion” at home/work AND a copy mailed to the home CCP 1162(2); or,
- Posting and mailing: Notice can be posted to door AND mailing a copy to unit address. CCP 415.45. This service requires a COURT ORDER. Service completed on 10th day after posting and mailing.

Timing in UD procedures

- 5 days to answer. CCP 1167
- 10 days to answer if post and mail.
- 10 days to amend without leave of court, need leave of court after that. CCP 1167.3
- how long does it take from complaint to a judgment?
  - jurisdictional differences:
    - SF: if LL doesn't set for trial, case can linger for 1 year or longer;
    - Inland Empire: If LL does not set case for trial, status conference set by the court. Cases do not linger.
- restricted public access
  - New law (CCP 1167.1): UD cases are restricted from public view unless judgment for LL prevails within 60 days of filing, or if LL prevails 60 days after filing the case and court orders unsealing of the case.

Responsive Pleadings after complaint is filed:

- Alternatives to Answer motions:
  - Motion to Quash
  - Demurrer
  - Motion to Strike Complaint
- Answer OR
- Post-answer motions:
  - Motion for summary judgment
  - Motion for judgment on the pleadings

Demurrer

- Procedure to object to legal sufficiencies in a complaint
- Grounds are set out in CCP 430.10
  - The Court lacks subject matter jurisdiction;
  - The Complaint fails to state a cause of action in unlawful detainer;
  - The plaintiff lacks legal capacity to sue; and
  - Another action is pending between the same parties on the same cause of action (court must take judicial notice of the other action)
- Defendant may demur under CCP 1170
- Should you demur?
  - *Delta Imports, Inc. v. Municipal Court*, 146 Cal.App.3d 1033 (1983).
  - *Borsuk v. Appellate Div. of the Superior Court*, 242 Cal.App.4th 607 (2015).

Motion to quash

- Motion: Motion to Quash service of summons based on the court's lack of jurisdiction over tenant CCP 418.10(a)(1)
- Hearing on Motion to Quash for be heard within 3 to 7 days CCP §1167.4(a)
- If Motion to Quash denied, plead/answer due within five days. CCP 1167.4(b)

QUIZ

- Mr. and Mrs. Jolie-Pitt came into your office again. This time they received a 3 Day Notice to Pay Rent or Quit from Mr. Landlord. This notice states they owe rent for the current month of March 2017 in the sum of $1,000. The notice period expires tomorrow. What is your advice to them? Assume that they paid $25 for rent for month of March and they have a receipt proving this fact.

a. Pay $1,000 to Mr. Landlord by tomorrow to avoid having an eviction filed against them.
b. Pay $975 to Mr. Landlord to avoid having an eviction filed against them.
c. Do nothing and wait to see if Mr. Landlord files an eviction against them.

Motion to strike

- Use Motion to strike irrelevant, false or improper matter in pleadings. CCP 436
- Grounds appear on the face of the pleadings or from any matter which court can take judicial notice. CCP 437
- File within in 5 days of being served with Complaint. CCP 435 –default will not be entered while motion pending
- Notice period is 16 court days pursuant to CCP 1005.

Answers

- Answers
  - Must file answer within 5 days
  - If there is not answer, LL can obtain a default
- Amended answer
  - Can amend without leave of court with 10 days of service
  - After 10 days, must request leave to amend
- Denials and Defenses
  - Form answer –Judicial Form UD-105
  - Denials and Affirmative Defenses
    - Form answer
    - Additional defenses/Affirmative Defenses not included on the form (subsidized housing, rent control, novel defenses), use “Attachment 3K”
- No counter claims, but can offset rent demand if habitability issues

Fee Waivers

- Low-income litigants may request the court for a fee waiver
  - Use Judicial Form FW-001 Request for Fee Waiver
  - Submit Judicial form FW-003 Order on Court Fee Waiver with the request
- If you are requesting a jury trial or additional services:
  - Use Judicial Form FW-002 Additional Requests for Fee Waiver
- Here is the cost of filing fees for civil cases: http://www.courts.ca.gov/documents/StatewideCivilFeeSchedule-062713.pdf

Discovery

- When discovery begins?
- Full range of discovery tools
  - Form and Special interrogatories
  - Request for Admissions
  - Oral Deposition
  - Request for Production of Documents
- Very limited timeline
  - 5-days to respond
  - Discovery cut off – 5 days before trial CCP 1170.8

QUIZ

- Mr. and Mrs. Jolie-Pitt did nothing after being served with the 3 Day Notice to Pay Rent or Quit. Yesterday someone came to their door and taped a summons and complaint on their door and this morning they received a copy of the same summons and complaint in the mail. What should they do now?

a. Wait to be served in person with the summons and complaint.
b. File an answer right away.
c. Contest the service of the summons and complaint. Follow-up-How should they do this?

Motion for judgment on the pleadings

- Defendant may file a Motion for Judgment on the Pleadings if:
  a. Court has no jurisdiction of the subject of the cause of action alleged in complaint
  b. Complaint does not state facts sufficient to constitute a cause of action CCP 438

- May file motion after you have already field an answer and time to demurrer to complaint has expired.

Motion for Summary Judgment

- MSJ may be made if on the face of the pleadings the action has no merit or there is no defense to the action or proceedings. CCP 437c
- MSJ in UD actions made by made any time after the answer is filed upon 5 days notice. CCP 1170.7
- Separate Statement of Facts not required. CCP §437c(b), (r) Notice requirements under CCP 437c not applicable
- California Rules of Court 3.1351 govern and notice requirements and opposition/reply to MSJ-made be made orally or filed and served on or before court date

Motion to set aside default judgment

- Default entered: When an answer is not filed within 5 days because tenant was not served or served but excusable mistake, an answer-set aside motion should be filed ASAP. Based on CCP § 473.
  - Landlords will file request for default automatically on the 6th day without checking if answer was filed, court will reject
- If client is out of possession before UD trial:
  - File motion to let court know
  - Under CC § 1952.3(a)(1)-(2), this case should convert to civil if Plaintiff Landlord wants to pursue money damage and LL/T has right to other civil litigation tools.
  - post-judgment motions – covered in trial session

Foreclosures (cover briefly)

- 90 days notice to quit required for tenants. CCP 1161b
- Owners get 3 day notice to quit. CCP 1161a
- Question-if tenant is not served with 90 day notice should tenant file a prejudgment claim of right to possession?
- Tenants can file prejudgment claim of right to possession any time before judgment or object to judgment for possession whether or not tenant was served with prejudgment claim of right to possession CCP 415.46

Stay of Execution

- If a judgment is entered for Landlord to obtain possession → will this create undue hardship for Tenant
- Sample motion attached

Last Quiz

- Mr. and Mrs. Jolie-Pitt decided to do nothing and wait to be served. Three weeks passed. They get nervous and called the court. The clerk informs them that a default judgment has been entered against them for not filing an answer even though they were not served. Mr. Landlord claimed that they were served on the morning that the summons and complaint was posted on their door. What are their next steps?

a. Mr. and Mrs. Jolie-Pitt should have listened to you. Now they need to pack up and leave before the sheriff locks them out.

b. They should negotiate with Mr. Landlord to give them more time to move.

c. As soon as possible they should file a motion to set aside the default and the default judgment, and if a writ of possession is issued then they need to also request that the court stay the writ of possession.

Sample packet

- UD Complaint
- Request for Fee Waiver and Order
- Motion to Set Aside
- Demurrer
- Motion to Quash
- Answer
- Attachment 3K
- Counter-Request for Jury Trial
- Demand for Jury Trial
- Motion for Summary Judgment
- Form Interrogatories
- Request for Production of Documents
- Special Interrogatories
- Request for Stay-Undue Hardship

- Question and answer session

NOTES