



# SUPERIOR COURT OF THE STATE OF CALIFORNIA County of Kings



**Unlawful Detainer**  
**Packet Purchase Price: \$10.00**

THERE WILL BE ABSOLUTELY NO REFUNDS OR EXCHANGES ON THE PURCHASE OF SUPERIOR COURT FORMS OR PACKETS

## What is an unlawful detainer action?

An unlawful detainer is a lawsuit that a landlord files in court to evict a tenant. If the judge agrees with the landlord, the landlord can ask the sheriff to physically remove the tenant from the rental unit. If not, the tenant can stay in the property.

- This packet does not cover all types of evictions. This packet should only be used for a **legal owner evicting a person from their rental property** and should not be construed as legal advice. A property owner with peculiar problems or questions should seek competent legal counsel.
- Landlords must follow all of California's state laws and any applicable local laws. They must take certain steps to evict a tenant.
- A way to do this is to have an Unlawful Detainer proceeding. A landlord can regain possession of the property, if a tenant is staying there against the law.
- Notices are very difficult, and it's not easy to explain what kind of notice a landlord has to give in each case. Landlords should talk to a lawyer to make sure the right notice is being served, and to make sure it is filled out correctly. Notices are not court forms, so a landlord has to write it up. If there are mistakes in the notice, the landlord might lose the case automatically.
  - There are different types of notices. The notice provided in this packet is the **Three Day Notice to Pay Rent or Quit**. Landlords can use this notice when the tenant is behind on the rent. The other types of notices can be researched at <http://www.courts.ca.gov>.
  - Before the landlord can bring court action to evict the tenant(s), the tenant(s) must have been properly (officially) served with a **notice**, and failed to obey the notice. Once this time period has expired you may open an Unlawful Detainer case with the court.

## What are the filing fees involved with filing an Unlawful Detainer case\*?

Demand amount on complaint:	Filing fee:
Amount demanding is less than \$ 10,000	\$ 240.00
Amount demanding is over \$ 10,000 less than \$ 25,000	\$ 385.00
Amount demanding is over \$ 25,000	\$ 395.00
Writ of Execution (for money)	\$ 25.00
Writ of Possession (for property)	\$ 25.00
The sheriff's office will require a separate fee to enforce the Writ.	

\* You may apply for this fee to be waived, if you are eligible. Ask the clerk for a Fee Waiver packet.

**The following Judicial Council forms and local forms are included in this packet:**

Form name:	Form number	Last revised on:	No. of pages
<input type="checkbox"/> <b>Instructions on Completing a Three Day Notice to Pay Rent or Quit</b>	local form	08-08-08	1
<input type="checkbox"/> <b>Three Day Notice to Pay Rent or Quit</b>	local form	08-08-08	1
<input type="checkbox"/> <b>Proof of Service of a Three Day Notice to Pay Rent or Quit</b> (two forms are provided in this packet)	local form	08-08-08	1
<input type="checkbox"/> <b>Civil Case Cover Sheet</b>	CM-010	07-01-07	2
<input type="checkbox"/> <b>Complaint – Unlawful Detainer</b>	UD-100	07-01-05	3
<input type="checkbox"/> <b>Summons – Unlawful Detainer-Eviction</b>	SUM-130	07-01-09	2
<input type="checkbox"/> <b>Proof of Service of Summons</b> (two forms are provided in this packet)	POS-010	01-01-07	2
<input type="checkbox"/> <b>Answer – Unlawful Detainer</b> (two forms are provided in this packet)	UD-105	01-01-07	2
<input type="checkbox"/> <b>Prejudgment Right of Claim to Possession</b>	CP10.5	01-01-91	2
<input type="checkbox"/> <b>Request for Entry of Default</b>	CIV-100	01-01-07	2
<input type="checkbox"/> <b>Declaration for Default Judgment by Court</b>	UD-116	07-01-03	3
<input type="checkbox"/> <b>Judgment – Unlawful Detainer</b>	UD-110	01-01-03	2
<input type="checkbox"/> <b>Writ of Execution / Possession</b>	EJ-130	01-01-06	2
<input type="checkbox"/> <b>Request to Set Case for Trial (Unlawful Detainer)</b>	UD-150	01-01-05	2

**Kings County has four Superior Court locations:**

<b>AVENAL</b> 501 E. Kings St. Avenal, CA 93204 (559) 386-5225	<b>CORCORAN</b> 1000 Chittenden Ave. Corcoran, CA 93212 (559) 992-5193	<b>HANFORD</b> 1426 South Drive Hanford, CA 93230 (559) 582-1010	<b>LEMOORE</b> 449 “C” St. Lemoore, CA 93245 (559) 924-7757
<b>Hours of Operation:</b>			
<b>Business Days: Monday – Friday</b>			
<b>Business Hours: 8:00 a.m. to 4:00 p.m.*</b>			
<small>* as of 9-8-09</small>			

**Online assistance:**

<a href="http://www.courts.ca.gov/selfhelp">www.courts.ca.gov/selfhelp</a> State of California Self-help website	<a href="http://www.kings.courts.ca.gov">www.kings.courts.ca.gov</a> Kings County Superior Ct. General website	<a href="http://www.leginfo.ca.gov">www.leginfo.ca.gov</a> Official California Legislative Information website	<a href="http://www.ezlegalfile.org">www.ezlegalfile.org</a> Interactive Electronic Forms Program
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## STEP 1. COMPLETING AND SERVING THE THREE DAY NOTICE TO PAY RENT OR QUIT

### How do I complete the Three Day Notice to Pay Rent or Quit form?

- Read the enclosed local form called:
  - [Instructions on Completing a Three Day Notice to Pay Rent or Quit](#) (local form)

Follow these instructions carefully. If you incorrectly fill out the Three Day Notice to Pay Rent or Quit you may invalidate it.

#### General:

1. A Three Day Notice to Pay Rent or Quit should be served on a Resident once the rent is past due. This document must be filled out correctly as it will become part of the court's records. If it is necessary to go to court to seek an eviction (also called an Unlawful Detainer action), an improperly filled out form will most likely cause the case to be dismissed.
2. If the rent falls due on Saturday, Sunday or a holiday, the law extends the time of payment through the next business day. The rent is not legally due except on a regular business day. The Resident is not in default until the day after the rent is due. Service of the Three Day Notice to Pay Rent or Quit prior to default is invalid.

#### After serving the notice:

1. You must keep a copy of the [Three Day Notice to Pay Rent or Quit](#), as this will become [Exhibit 2] in the court file.
2. You must complete and submit an original [Proof of Service of a Three Day Notice to Pay Rent or Quit](#) for each named Resident/tenant when you open an Unlawful Detainer case with the court. This will become [Exhibit 3] in the court file.

## STEP 2. COMPLETING THE UNLAWFUL DETAINER PAPERWORK AND FILING THE FORMS WITH THE CLERK'S OFFICE

### If the Resident did not comply with the Three Day Notice to Pay Rent or Quit, what forms do I complete next?

The following forms are completed:

- [Civil Case Coversheet](#), form CM-010
- [Complaint – Unlawful Detainer](#), form UD-100
  - attach and label a *copy* of written agreement as [Exhibit 1], if applicable
  - attach and label a *copy* of the notice as [Exhibit 2]
  - attach and label the *original* proof of service of the notice as [Exhibit 3]. Note each known defendant must be served separately. One proof of service is utilized for each named defendant.
- [Summons – Unlawful Detainer](#), form SUM-130
- [Answer – Unlawful Detainer](#), form UD-105
  - Besides placing the court case number on this form, leave this form blank – it is to be served on each named defendant.
  - Two copies of this form are provided in this packet, you may need to make additional copies for each named defendant.

## STEP 3. CHOOSING WHETHER OR NOT TO SERVE A PREJUDGMENT CLAIM OF RIGHT TO POSSESSION



Including the following form in your service packet is **optional** and requires specific service instructions.

### **Prejudgment Right of Claim to Possession, form CP10.5**

#### **Why would I want to include this form in the service packet?**

If there are other people living in the property that you, as the landlord, didn't include in the Complaint, you have two choices. You should ask a lawyer what choice is best.

Your choices are:

- Do nothing: If you do nothing, the people who aren't included in the complaint don't have to leave right away. So, if you win and those people don't leave voluntarily, the sheriff won't evict them and the case can be delayed.
- Serve them: Even if you, as the landlord, didn't include those unknown people in the complaint, s/he can serve anyone else at the property with a copy of the Summons and Complaint. But the landlord also has to serve them with a [Prejudgment Claim of Right of Possession \(form CP10.5\)](#). This form gives them the chance to file papers with the court within 10 days to tell the judge they have a right to live on the property. If they don't file anything, then the sheriff will evict them if the landlord wins.
  - If you choose to have this form included in your service packet (with the Summons and Complaint) it must be served correctly.
  - Besides placing the court case number on this form, leave this form blank.
  - One copy of this form is provided in this packet, you may need to make additional copies for each named defendant.

#### **Who could serve this form?**

Service of the Prejudgment Claim of Right to Possession in this manner shall be effected by a marshal, sheriff, or registered process server (per CCP 415.46).

#### **How is this form served?**

Please read the **California Law Code of Civil Procedure 415.46**, for special service instructions. This code can be researched at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

In order to include "All Unknown Occupants" on your future Judgment and Writ, the Prejudgment Claim, Summons and Complaint shall be served on all persons who may claim to occupy the premises at the time of the filing of the action by:

- (1) leaving a copy of the prejudgment claim of right to possession attached to a copy of the summons and complaint at the premises at the same time service is made upon the tenant and subtenant, if any,
- (2) affixing/posting the same so that it is not readily removable in a conspicuous place on the premises so that it is likely to give actual notice to an occupant, and
- (3) sending/mailing the same addressed to "all occupants in care of the named tenant" to the premises by first class mail.

## STEP 4. AFTER COMPLETING THE FORMS YOU MUST MAKE THE NECESSARY COPIES AND HAVE YOUR FORMS ASSEMBLED PRIOR TO BRINGING THEM TO THE CLERK'S OFFICE

### How do I assemble my forms?

You must make copies and assemble your documents prior to submitting them to the Clerk's Office. Read the ***Tips For Filling Out & Handling Your Court Forms*** (located after the last page of this coversheet) for further instructions on how to prepare and submit your documents to the court.

## STEP 5. SERVING THE DOCUMENTS

### Who is served with the Summons and Complaint packet?

Each defendant named in the lawsuit must be served with the forms you filed with the court.

### Who can serve the Summons and Complaint packet to the named defendants?

Any adult who is not involved with the case can serve the tenant the Summons and Complaint. The landlord cannot serve the Summons and Complaint, even if s/he served the notice. These documents must be served by someone other than you, who is over 18, and is not a party to the action.

#### Example of a server:



- a neighbor
- process server (list can be retrieved at the clerk's office)
- sheriff's department (in the county of where the tenant resides)



Remember, if you are including the **Prejudgment Right of Claim to Possession, form CP10.5** not just anyone can perform the service. See page 4 (of this coversheet) for detailed information on this form.

## STEP 6. FILING A PROOF OF SERVICE

### What form is completed after service is performed?

The server must complete the mandatory judicial council form for **each defendant** (pursuant to CCP 417.10(f)):

#### **Proof of Service of Summons, form POS-010:**

- A separate form must be completed stating how each defendant was served.
- List each document that was served (including the blank forms).
- Make a copy of this form for your records and submit the original and the copy to the Clerk's Office. The copy will be stamped and returned to you.
- The original form will be placed into the court's file.

## STEP 6. (CONTINUED) FILING A PROOF OF SERVICE

### What if I had the Prejudgment Claim of Right to Possession included with the Summons and Complaint to all defendants and all unknown occupants?

If you had the Prejudgment Claim of Right to Possession form included with the Summons and Complaint, the following is required to be submitted:

- A separate **Proof of Service of Summons, form POS-010** as to each defendant.
- A separate **Proof of Service of Summons, form POS-010** for **“All Unknown Occupants”** must be filed stating service was performed by:
  - substitute service AND
  - posted at residence AND
  - mailed to **“All occupants in care of the named tenant”**



Before submitting your Proof of Service of Summons, you must make sure it is filled out completely and correctly. A mistake on this form can delay the case.

## STEP 7. DETERMINE THE DEADLINE FOR EACH DEFENDANT OR UNKNOWN OCCUPANT

The Civil Code of Procedure sections (CCP 415 through 415.46) mentioned on this page can be researched online at the following web address: [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

### How long does a defendant have to respond after being served the Summons and Complaint?

Type of Service performed:	Number of days:	Default may be entered on the:
Personal Service	(5 days to answer)	6 <sup>th</sup> day after date of service
Substituted Service	(10 days for mailing+ 5 days to answer)	16 <sup>th</sup> day after date of mailing
Posted and Mailed by Certified Mail	(10 days for mailing+ 5 days to answer)	16 <sup>th</sup> day after date of mailing

### How long does a claimant (unknown occupant) have to file a Prejudgment Claim of Right to Possession?

Number of days to file a claim:	Default may be entered on the:
(10 days)	11 <sup>th</sup> day after date of mailing

### How long does a claimant have to file a Response to the Summons and Complaint from when a Claim of Right to Possession is filed with the Court?

Number of days to file a response:	Default may be entered on the:
(5 days)	6 <sup>th</sup> day after the Claim of Right to Possession is filed with the court.

## ALERT!

If there is more than one defendant in the case, there could be different deadlines if each defendant was served in a different way or on a different day.

You are responsible to keep track of the deadline for each defendant.

Here is a tool to consider when counting these days:



### Factors to consider when counting these days:

Do **weekends** count?

Yes, weekends are included in the counting of the 5 days to file a Response. If the **last day** or 5<sup>th</sup> day to file a Response falls on a weekend or a court holiday, the period to file a Response is extended through and including the following court day.

Do **Judicial Holidays** count?

No. All judicial holidays are excluded and **should not** be included.

### PERSONAL SERVICE (CCP 415.10):

**Definition: Personal service-** Refers to when court forms are personally served (delivered). The person who serves the forms must tell the other person that these are legal papers, then leave the papers near the person (at their feet is fine). The person they serve does not have to accept the papers or say or sign anything.

If a defendant was served by this method, he/she has 5 days to file a response to the Summons and Complaint.

### SUBSTITUTED SERVICE (CCP 415.20):

**Definition: Substituted service-** Service of process on a party by leaving the court papers with someone other than a party to the lawsuit; valid only if certain specified procedures are followed.

If a defendant was served by this method, he/she has 15 days to respond to the court. This date is calculated by counting 10 days after the date of mailing plus 5 days to file a response to the Summons and Complaint.

- The date of mailing is the postmark date.
- The law requires personal attempts to be made, prior to utilizing this method. A **Declaration of Diligence** must be filed stating at least three service attempts were made on three separate days at separate times.
  - A **Declaration, MC 030** form can be requested from the Clerk's office or at <http://www.courts.ca.gov/>.

### POSTED AND MAILED BY CERTIFIED MAIL (CCP 415.45):

**IMPORTANT:** This type of service can only be performed, **IF** it has been "ordered" by the court.

If a defendant was served by this method, he/she has 15 days after the date the server mailed the court papers to vacate (leave) the property or to file a response to the Summons and Complaint. This date is calculated by counting 10 days after the date the documents were sent by certified mail plus 5 days to file a response.

- Note: The date of mailing is the postmark date.

### PREJUDGMENT CLAIM OF RIGHT TO POSSESSION AS TO "ALL UNKNOWN OCCUPANTS (CCP 415.46):

If "All Unknown Occupants" were served by this method, the unknown occupant has 10 days after the date the server mailed the court papers, in order to file the Prejudgment Claim with the court. Once the Prejudgment Claim is filed this claimant has an additional 5 days to file a Response to the Summons and Complaint.

For further instruction on this method of service, please read page 4 of this coversheet.

## STEP 8. WHAT TO DO IF THE DEFENDANT FAILS TO RESPOND

### Definitions:

**Default:** When a defendant in a civil case does not file an answer or other response with the court or go to court when they are supposed to, after being properly notified. This is called being "in default."

**Judgment:** The official decision of a court that resolves the dispute between the parties to a lawsuit;

### After I have determined the defendant's time to respond has expired, what do I do?

You must request a "default" to be entered as soon as the defendant's time to respond is up. If not the defendant will have more time to respond. The defendant will be able to file an Answer as long as you have not filed a [Request for Entry Default, form CIV-100](#).

You must also request a Judgment to be entered in your favor. This is called a "default judgment" and it means the defendants will not be able to fight the case in court.

### Form used to enter default:

[Request for Entry Default, form CIV-100](#)

### Form used to enter a judgment:

[Judgment-Unlawful Detainer, form UD-110](#)

### Types of Judgments you may obtain depend on what you requested in your Complaint:

#### 1) Possession of the premises only:

a. **This is called a Clerk's Judgment.** This type of Judgment is entered by the clerk of the court. It may be filed when Default is entered on all defendants. This type of Judgment is for possession of the premises only.

#### 2) Money only or Money and Possession of the Premises:

a. **This is called a Court Judgment.** This type of Judgment is reviewed by the Judicial Officer.

If you are filing one of the types of Judgments mentioned above in item #2 the following form must also be completed:

[Declaration for Default Judgment by Court, form UD-116](#)

## STEP 8 (CONTINUED) WHAT TO DO IF THE DEFENDANT FAILS TO RESPOND

The type of Writ you are to complete to enforce your judgment depends on the type of judgment you received. Your two options are as follows:

<b>Definitions:</b>
<b>Writ of Execution:</b> An order issued by a court requiring the performance of a specified act, or giving authority to have it done. It is used to allow the <a href="#">levying officer</a> the power to take the judgment debtor's property.
<b>Writ of Possession:</b> A document issued by the court after the landlord wins an eviction (unlawful detainer) lawsuit. The writ of possession is served on the tenant by the sheriff. The writ informs the tenant that the tenant must leave the rental unit within five days, or the sheriff will forcibly remove the tenant.

### 1) Form used for a Writ of Possession (for property of the premises ONLY).

**Writ of Execution, form EJ-130**

- This is a non-monetary request (for possession of the property only)
- Fee for issuance \$25.00.
- The Sheriff's Department will post a *Notice to Vacate* on the property (an additional fee is required by the Sheriff for this service).
- If the defendant fails to move out by the lockout date, the sheriff will take possession of the property.
- Important- this packet includes a sample of how to complete this form for Possession of Real Property.

### 2) Form used for a Writ of Execution (for money).

If your Judgment includes costs such as past due rent and/or damages you may complete the following form:

**Writ of Execution, form EJ-130**

- Fee for issuance \$25.00.
- This is for a monetary (money) request, you can use this to attach the defendant's wages, bank accounts, etc.

<b>What to know when completing your Writ and submitting it to the court:</b>
1. Please ensure you complete your Writ accurately. The clerk will not review your entire Writ for accuracy prior to issuing it. It is your responsibility to ensure it is completed accurately. If the Sheriff refuses to accept your Writ due to an error, you will be required to complete a new Writ, and have the new Writ issued by the clerk. You will be charged another \$25.00 fee.
2. When you request the clerk to "issue" your Writ, you will need to be sure that you submit an original Writ along with five (5) copies to the clerk.
3. The clerk will return the original and four (4) of your copies of the Writ to you. A copy will be placed in the court file.
4. Once the clerk issues the Writ, you must take it to the Sheriff's Department to enforce the lock-out. Once a Writ has been issued <b>no changes/corrections can or will be made to it.</b>
5. You may only have <u>one</u> Writ issued <b>per county</b> . A Writ is valid for 180 days from the day it is issued. You will not be able to obtain a new Writ until one of the following applies: <ul style="list-style-type: none"><li>a. 180 days have lapsed since you last had a Writ issued; or</li><li>b. If less than 180 days have lapsed, you must return the <b>original</b> Writ back to the Court from the Sheriff's office.</li></ul>

## STEP 9. WHAT TO DO IF THE DEFENDANT RESPONDS

If a Response or an Answer is filed with the Court, by a defendant, both parties have a right to a Court Trial.

Please note a Court Trial WILL NOT be set if a timely written response to the unlawful detainer complaint is not filed.

<b>Definitions:</b>
<b>answer:</b> A statement that a defendant writes to answer a civil complaint and say what defense they will use.
<b>court trial:</b> A trial without a jury. A judge decides the case.

### How do I obtain a Court Trial date?

In order to obtain a Court Trial you, as the landlord, must make this official request by completing and submitting the following mandatory Judicial Council form:

[Request/Counter-Request to Set Case for Trial \(Unlawful Detainer\) \(form UD150\)](#)

**Important:** Any/all dates that you are **NOT** available must be listed on this form.

### Once the Request/Counter-Request to Set Case for Trial (Unlawful Detainer) (form UD150) is completed, what do I do?

After completing the form, make a copy for each party. Someone over the age of 18 and **NOT A PARTY TO THIS CASE** must mail a copy to each party. The server must complete the Proof of Service (which is located on page two of the Request UD-150).

The Court clerk will hold on to the ***Request/Counter-Request to Set Case for Trial (Unlawful Detainer)*** for 5 days.

- If the answering defendant does not agree with the information in the landlord's Request, this party may also file and serve you, as the landlord, with a Counter-Request.
- If no Counter-Request is submitted to the Court by the answering defendant, the clerk will mail out the Court Trial date, time and location.
- The Court Trial will be held not later than the **20<sup>th</sup> day** following the date that the request to set the time of the trial is made (pursuant to CCP 1170.5(a)).

### ALERT!

If the tenant responds with a Motion to Quash or a Demurrer, the landlord should talk to a lawyer because there are steps s/he needs to take to avoid delays, fix any problems, and continue with the case