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The Landlord's Guide to the Eviction Process

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INTRODUCTION

Please note that the information contained on this web site is specifically for **CALIFORNIA** evictions that are not in rent controlled jurisdictions. If your property is outside of California or located in a rent-controlled area, you should seek the advice of a qualified attorney in your area. The discussion below is not intended for rent controlled property, commercial property or property outside of California and should not be construed as specific legal advice. The following is simply an overview of the unlawful detainer process in California and the way our firm processes eviction cases.

HOW DO I START AN EVICTION?

1. PREPARING AND SERVING THE NOTICE

In order for a Landlord to initiate the eviction process, California law requires all persons residing in the premises to be served with a Notice. The most common types of notices are discussed below. If preparation or service of the Notice is done incorrectly or not at all and the tenant raises it as a defense, the Court will dismiss the Landlord's complaint due to a technical defect and the tenant will prevail at Court.

If your property is in Orange, Southern Los Angeles County, Riverside, or San Bernardino Counties, we would be happy to prepare the notice for you and fax it to you at no charge. We also have bonded and licensed process servers who can serve it for you for a nominal charge should you not wish to serve the notice yourself.

A. THE 3 DAY NOTICE TO PAY RENT OR QUIT

This is by far the most common type of notice used by Landlords to initiate the eviction process and is utilized when the tenant has failed to pay the full rent due and owing for the particular rental period. All tenants named in the rental agreement must be listed on the notice as well as the names of all other occupants or sub-tenants, if known. The complete property address and county must be on the notice including the apartment number of the unit if applicable. Finally, the exact amount of rent must be demanded in the notice ***without any additional amounts for late charges, interest or other penalties***. If any charges other than rent are included on the 3-Day Notice to Pay Rent or Quit, California case law holds that the notice is fatally defective and the Landlord's case will be dismissed. Be sure to date and sign the notice and fill out a proof of service indicating the date and method of

service.

B. THE 30 DAY NOTICE
The 30-day notice can only be used to terminate a month-to-month tenancy. It cannot be used to terminate a fixed term lease agreement. The critical point to remember is that the Landlord must not accept any rent payments to cover any period of time ***after*** the expiration of the notice date. If the tenant tenders a rent payment to cover a period of time after the expiration of the 30 days, it must be returned immediately via certified mail to avoid a waiver of the 30-day notice. *Finally, Landlords are cautioned not to give any reason at all for the termination other than the fact that the rental agreement permits either party to terminate the tenancy with 30 days' notice.* Putting a reason on the notice other than the foregoing only opens the Landlord up to a retaliatory eviction or discrimination defense by the tenant.

C. THE 3 DAY NOTICE TO CURE BREACH OF COVENANT OR QUIT
This type of notice is used when the tenant has breached some material term of the rental agreement other than non-payment of rent, i.e., No Pets clause, subletting without Landlord's consent, or not paying late fees. The Notice essentially gives the tenant 3 full days to correct the violation or move out of the premises. Tenants will normally contest notices of this type in court so it is essential that the Landlord have witnesses, photographs and other evidence to prove to the court that the breach did in fact occur. In a situation where there is a pet or constant late payments, it is advisable to simply serve a 30-Day Notice to terminate the tenancy (if it is month to month) so that the tenant has additional time to vacate. A 30 Day Notice reduces the chances that the case will be contested at court since most tenants cannot vacate the premises in 3 days.

D. THE 3 DAY NOTICE TO QUIT FOR COMMITTING A LEGAL NUISANCE
This notice is similar to the previous notice but is used when the tenant is engaging in criminal activity or other acts that are harmful to other occupants of the property, thereby constituting a legal nuisance. Such acts include illegal drug activity, prostitution, and in some cases gang activity. **Code of Civil Procedure**, Section 1161 provides the legal basis whereby a landlord can serve a 3 Day Notice to Quit on a tenant who "...illegally sells a controlled substance upon the premises or uses the premises to further that purpose...". Again, the Landlord is advised to have independent witnesses (other tenants who observed the illegal activities), police officer testimony and other evidence to sustain the Landlord's burden of proof should the tenant contest the matter at trial.

2. PROPER METHODS OF SERVING THE 3/30 DAY NOTICES

A. Personal Service.
This is the best method of service and simply means

that each occupant of the premises is handed a copy of the notice by the landlord or landlord's agent. The original notice should be retained by the Landlord and a proof of service completed.

B. Substitute Service.
This is accomplished where an individual of suitable age and discretion (over 18 and competent to understand what the notice is) is handed a copy of the notice at the premises with another copy mailed to the premises on the same day via first class mail. Certified mail is acceptable as long a copy is also sent via first class mail.

C. Post & Mail.
In this situation the notice is posted on the front door of the premises and mailed the same day via first class mail.

Good News for Landlords: The California Court of Appeals, Fourth Appellate District has ruled in the case of **Losornio v. Motta** that when the landlord posts and mails, or sub-serves and mails the 3 or 30 day notice that he or she ***no longer*** has to wait an additional 5 days before filing the unlawful detainer case. Formerly the Court were split on whether or not to add five days to a notice when it was mailed but now the issue has been clearly decided.

Please note that substitute service and post and mail service are only acceptable methods of service where the server has first made a diligent, good faith attempt at personal service but cannot effectuate personal service on the tenants despite the attempts.

3. CALCULATING THE EXPIRATION OF A 3 DAY NOTICE

The following is a simple chart to help determine when the 3-day notice legally expires. Some cases are lost at court because the landlord or attorney filed the case before the 3 full days have expired.

VERY IMPORTANT: Please note that if the last day falls on a legal holiday, the tenant is given an extra day to comply. Example: a 3-day notice served on January 2nd is improper because January 1st is a legal holiday so that the rent is not late if paid on January 2nd.

Day Served	Notice Expires Midnight of
Monday	Thursday
Tuesday	Friday
Wednesday	Monday
Thursday	Monday
Friday	Monday
Saturday	Tuesday
Sunday	Wednesday

4. THE UNLAWFUL DETAINER COMPLAINT - (Court Action)

After the Notice period has expired, the Landlord may commence an unlawful detainer action. Because an unlawful detainer action is a summary proceeding to restore possession fairly quickly, it is

essential that the summons and complaint be prepared accurately by an individual trained in the law. A minor mistake or defect in the tenant's name, property address, or other allegation could result in a dismissal of the entire case causing the Landlord to lose more time and money.

If you decide to use our services, once the summons and complaint are prepared and double-checked for accuracy, our licensed and bonded process servers will rush the documents to court for filing and immediate service on the tenants, usually within 24-48 hours.

5. THE EVICTION IN AN UNCONTESTED CASE - (Tenant Does Not Respond)

In most cases, the tenant will not respond to the unlawful detainer lawsuit. In that event, we will quickly prepare default documents, which are filed with the court within 24-48 hours so that a judgment for possession is entered. Once the judgment for possession is entered by the court clerk, the case is sent to the Marshal's or Sheriff's office for lockout proceedings. The court clerks send the Writs of Possession to the Marshal who drives to the property and posts a 5-Day Notice To Vacate on the front door. If the tenants fail to vacate within that period of time, the Marshal or Sheriff will come out a second time and physically lock out the tenants and possession will be restored to the Landlord. It is advisable to change the locks so that the tenant cannot break into the property.

6. THE EVICTION IN A CONTESTED CASE - (Tenant Files a Response at Court to Delay Case)

There are at least five ways in which a tenant can use or abuse the court system to delay the eviction process. Unfortunately, there are many eviction delay services available to the unscrupulous tenant and, for a nominal fee, the tenant can file various frivolous motions with the court to temporarily halt the eviction proceeding. Many times, the tenant will not even bother to mail a copy of the Answer or other motion to the Landlord's attorney in an effort to "sandbag" them. It is frustrating to be involved with a tenant who pulls these legal tricks and maneuvers but the California court system allows tenants to file the following response/motions regardless of whether there is any merit or truth in them.

A. LEGAL DELAY TACTICS USED BY TENANTS

1. ANSWER TO COMPLAINT
This is the most common pleading filed by tenants and means that they want to go to trial against the landlord. About one-third of all eviction cases filed will result in a tenant filing an Answer. Once the Answer is filed, our policy is to immediately file a request with the Court to give you the earliest available trial date-usually within 12-20 days. Many Answers filed by tenants have no merit and contain false allegations of habitability problems or other trivial defenses, but since they raise triable issues of fact, the case must be tried.

Some Answers do contain legitimate viable defenses, which will have to be analyzed by the property owner and our office to determine the most expedient course of action so that there are no surprises at trial. This is usually the case where

there are severe habitability problems, fair housing issues, or cases where it is very likely that the landlord will lose at trial.

Once our office obtains the trial date, the Landlord or property manager will be notified and must be present at trial to testify. When the Landlord meets his or her burden of proof at trial and the tenant fails to present any evidence to defeat the Landlord's case in chief, the court will award the Landlord possession of the premises, forfeiture of the rental agreement, damages for past due rent, attorneys fees, and court costs. The lockout proceedings are instituted in the same manner as for an uncontested case.

2. MOTION TO QUASH
On some occasions, the tenant will file a Motion to Quash in which the tenant says to the Court that he or she was not properly served with the summons and complaint so that the case should be dismissed. The obvious question is how does the tenant know about the unlawful detainer complaint if he or she does not have a copy of it?

These motions frequently contain the same generic declaration by the tenant in which the tenant claims that they came home and found the summons and complaint either stuffed in the front door or thrown on the ground outside the front door. Sometimes it is true that the tenant was not properly served but in most cases it is simply done to drag the case out. The Landlord's attorney will then have to file an opposition to the Motion to Quash and appear at the hearing with the process server who will testify that the tenant was in fact personally served.

Most judges will deny the tenant's motion and order the tenant to file an Answer within five days. However, if the judge believes that the tenant was not properly served, the process server or attorney can simply re-serve the summons and complaint on the tenant at the hearing if the tenant even shows up. This type of motion delays the case about 10-12 days.

3. DEMURRER/MOTION TO STRIKE
This is another motion filed by tenants which is used to challenge the legal sufficiency of the Landlord's complaint for unlawful detainer. It essentially says that the Landlord has no case. If the demurrer does raise valid issues such as serious defects in the unlawful detainer complaint, the Landlord can amend the complaint to correct the alleged defect. Usually, the demurrer has no merit, but the Landlord's attorney must file a written opposition and appear at Court for oral argument. Once again, most judges will deny the tenant's demurrer and order the tenant to file an Answer within five days, but the effect of the demurrer is to delay the case another 2-3 weeks.

4. CLAIM OF RIGHT TO POSSESSION also called Arrietta Claim
Sometimes when the Marshal or Sheriff attempts to

perform the final lockout, a third party will hand a Claim of Right to Possession form to the Marshal in which that individual claims to have been an occupant of the property but was not named in the unlawful detainer complaint. The Marshal will have to immediately stop the lockout until the court hears the occupant's allegations at a hearing. The hearing is held on the fifth day after the claim is received if no rent is posted by the occupant, or if the occupant posts 15 days rent, the hearing will take place anywhere from one to two weeks later. If the judge decides that the claim is valid, the Landlord must start the whole eviction process over again as to that tenant by serving a new notice followed by the summons and complaint which the occupant can contest by filing any one of the above responses. If the claim is denied, the court will order the Marshal to continue with the lockout.

Important: The only way to prevent an Arrieta claim is to either serve everyone in possession or to serve a form with the summons and complaint known as a Pre-judgment Claim of Right to Possession. This form gives any unnamed occupant the right to identify himself or herself so that the Landlord can proceed against them. The drawback of filing this form is that it delays the case by an additional five days since the unknown occupant has ten days to respond instead of only five. If you suspect that your original tenants have allowed numerous sub-tenants to move into the rental unit, it is strongly advised that the Pre-judgment Claim form be filed and served. It is the policy of our office to serve a Pre-Judgment Claim in all cases unless we are advised by the Landlord that they do not want it served.

5. BANKRUPTCY
This is probably the worst thing that a tenant can do to delay the eviction as it is expensive and extremely frustrating for the Landlord. Fortunately, it only happens in the worst of cases (maybe 1 in 50).

Here's what happens: When the Marshal arrives to perform the lockout, the tenant shows a Chapter 7, 11, or 13 bankruptcy petition to the Marshal who must immediately stop the eviction. The legal effect of filing any type of bankruptcy petition is to create an "Automatic Stay" of all state court actions against a debtor. Because bankruptcy law is federal law, it pre-empts California State law so that the Landlord is powerless to proceed without obtaining what is known as "Relief from the Automatic Stay." The Landlord's attorney must file a Motion for Relief in the Bankruptcy court and a hearing is held in which the debtor-tenant is allowed to respond to the Landlord's motion. Normally, these motions are granted in favor of the Landlord because the tenants have no equity in the subject property, and it is not part of their bankruptcy estate. Once the Order for Relief is signed by the Judge and mailed back to our office, we immediately forward it to the Marshal for final lockout.

A bankruptcy filing can delay an eviction by four to six weeks if the Motion for Relief is not immediately filed. Once our office learns of a bankruptcy filing, we file an Ex Parte Application (Emergency) with the U.S. Bankruptcy court so that your Motion for Relief can be heard in about two weeks rather than the standard four-week time frame.

Big Problem - Multiple Bankruptcy Filings:
Some unscrupulous tenants will file one or more bankruptcies, i.e., first, husband files and then later wife files, or they file a Chapter 7 and a Chapter 13. When the Marshal goes to perform the lockout, the husband will show his Bankruptcy Petition to the Marshal and the eviction will stop until the Order for Relief discussed above is given to the Marshal. The Marshal goes to the property the second time to lock out the tenants, but now the wife or even some third party hands another Bankruptcy Petition to the Marshal, which stops the lockout again. This means that Landlord's attorney will have to prepare a second Motion for Relief and go to bankruptcy court again to have another Order for Relief granted.

Most people wonder how the Bankruptcy Court can allow this non-sense. The short answer is that the Bankruptcy judges and court staff do not know who is filing a fraudulent bankruptcy and who is filing a legitimate case and they are very reluctant to throw Bankruptcy cases out without clear evidence of fraud.

The problem with multiple bankruptcy filings is that the majority of Bankruptcy judges will NOT grant the landlord something called PROSPECTIVE RELIEF or IN REM RELIEF on the first Bankruptcy filing by a tenant. When a Motion for Relief asks for Prospective and In Rem Relief it asks the Court to prevent or bar any other debtor or tenant living in the rental premises from filing a Bankruptcy Petition. The majority of Bankruptcy Judges in the Central District of Southern California will only grant PROSPECTIVE and IN REM relief after the second or even third Bankruptcy filing and the landlord has to prove to the Court that the debtors or tenants filed these cases for fraudulent or improper purposes. In other words, the burden of proof is on the Landlord to show the Court that the Bankruptcy is fraudulent. This is a serious problem with our Bankruptcy Court system and until Congress changes the laws, not much can be done. Please write to your Congressperson with your concerns.

7. AFTER THE LOCKOUT - (DISPOSING OF THE TENANT'S PROPERTY AFTER THE LOCKOUT)

If the tenant is evicted by the Marshal, the law allows the tenant 15 days to claim any personal property left behind at the premises. If the tenant vacated without being locked out by the Marshal, a Notice of Belief of Abandonment must be mailed to the tenant's last known address and the tenant is given 18 days to claim the property. During this time period, the Landlord is obligated to store the property in a safe place, either in the rental unit or a storage facility. If the tenant shows up to claim the property, reasonable storage charges can be demanded, but it is usually not worth the

Landlord's trouble to pursue the matter since most Landlords simply want to end all dealings with the tenant. Under no circumstances may the Landlord hold the tenant's property hostage by demanding that the tenant pay past due rent or other charges. This could trigger a lawsuit by the tenant for conversion (stealing) his or her property. Always take an inventory of the personal property and take pictures or a videotape of the items.

If the property appears to have a fair market value of less than $300, then it can be disposed of by the Landlord after the 15 or 18 day period. If the property is worth more than $300, the Landlord must auction the property through a public sale. The notice of the time, date and place of the auction must be published in a newspaper of general circulation once per week for two consecutive weeks. The auction can then take place five days or more after the last notice was published.

8. ACCOUNTING FOR THE SECURITY DEPOSIT

California law requires the Landlord to provide the tenant with a written accounting of the tenant's security deposit within 21 days of regaining possession of the property, unless the rental agreement provides for a shorter time period. The Landlord can deduct delinquent rent, cleaning fees, repairs above normal wear and tear and any other damage, which can be reasonably attributed to the tenancy. If there is a balance remaining, it must be returned to the tenant.

Landlord's are cautioned to take this law seriously and to fully comply. The security deposit law allows tenants to sue the landlord for failure to comply with the law and many tenants have been successful in recovering the full amount of the security deposit plus punitive damages for the landlord's failure to make an accounting or bad faith retention of the security deposit when it should have been returned to the tenant.

9. COLLECTING THE MONEY JUDGMENT

After the tenant has been successfully evicted, the Landlord can decide whether or not a money judgment is desired. Our office can obtain a money judgment for you for back rent, court costs and attorney's fees. A judgment is valid for 10 years. If you know where the tenant works, our office can attempt collection of the judgment for you. If the tenant has no job or you cannot locate their place of employment, our colleagues at South West Collections will collect the judgment for you on a contingency basis.

10. CONCLUSION

We hope that this discussion on the unlawful detainer process in California has been informative and helpful to you as a landlord. If you have any further questions or concerns, please feel free to contact us for more information. If you need a 3 or 30 Day Notice, we will gladly prepare one for you at no charge. Once again, thank you for your interest in our firm. We welcome the opportunity to be of service to you.

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