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## RESIDENTIAL UNLAWFUL DETAINER INFORMATION GUIDE

**We are a Professional Law Corporation practicing in a limited area of real estate law where we exclusively represent landlords in the state court system and creditors in the United States Bankruptcy Court. Our firm has filed over 20,000 evictions and is dedicated to service by being responsive, knowledgeable, personable and motivated, but at the same time providing reasonable flat rate fees. Please keep in mind that this does not pertain to those areas that practice rent control.**

This information sheet is provided as a general guide to allow you to understand the unlawful detainer process. **If you completely read this guide it should answer most of your questions to unlawful detainers. If you are a landlord you should have an overall handle of the procedures and the process because you will probably have to go through it more than once.**

**Some books that I have for reference guides are longer than two thousand pages. This guide is not intended to be a complete thesis on unlawful detainer law or procedure. The statements contained in this guide are correct generalizations of the law that shall apply in the majority of residential cases.**

An Unlawful Detainer actions is a "Special Summary Proceeding", lawsuit that entitles the landlord to statutory priority over other civil cases. Your action still falls in this class as long as possession is at issue, once you get possession the case becomes a general civil action or you can dismiss the case and refile it as a small claims actions which is probably the better way to proceed. Because Unlawful Detainer actions are a special proceeding they are covered under different laws than a regular law suit and they move at a much faster pace.

## ARRIETA CLAIMS

Arrieta claims are being explained before any explanation of the filing of the unlawful detainer since you must decide prior to filing if you desire to have a Pre-Judgement Claim Of Right to

Possession Form served with your lawsuit on any potential occupants of the premises.

In the case of *Arrieta vs, Mahon*, now codified as CCP1174.3, the Supreme Court of the state of California held that before any person maybe forcibly evicted by the levying officer, they must have an opportunity to be heard.

We strongly recommend serving the prejudgement form with the original summons and complaint. This is very important when you have adults living in the property and you are not sure who they are or what their names are.

### **CO-SIGNERS**

A co-signer is a guarantor that the actual tenant will perform under the lease or rental agreement and specifically will pay the rent. A co-signer does not live at the leased premises.

An unlawful detainer is intended to be against those persons who reside in the premises. It is my professional opinion that the co-signer may not technically be a proper party in an unlawful detainer action because he does not live at the leased premises.

However, I am also aware that the co-signer is generally the only person that you could collect a judgement against, and that the you don't want to have to file a second lawsuit against the co-signer.

I know many fine, ethical attorneys who do name co-signers in the unlawful detainer actions to save the second lawsuit being filed. I think the real issue is service of the cosigner because they do not live at the address of the tenants and require a second service. This is not at issue if the co-signer files an answer to the unlawful detainer action but if they are defaulted it is.

The co-signer can come back to court and have the default judgement set aside against them, for lack of proper service. I believe the best procedure is to pay an additional fee to have them served by a registered process server at their address, thus avoiding the problem. Many times they will want to buy the law suit away so as not to have their credit ruined. Getting the co-signer served will probably slow your eviction down a few days, but is the safest thing to do.

It might be advisable to have us write a letter to the co-signer after the three day notice to pay or quit has been served to try and resolve the matter, advising him or her that a law suit is about to be filed because the parties her or she has co-signed has not paid the rent.

### **ADDRESSES MUST BE CORRECT**

An unlawful detainer is really nothing more than a process to obtain a court order to evict people from a certain address. The ultimate person that needs to be pleased in the end to do this

is the sheriff. The sheriff requires the address to be marked and correct. **It is utmost importance that you give us the correct address and have the correct address on your notices and contracts.** If we are not provided with the correct address or you have a wrong address listed on a contract or notice we may have to redo the case over and you will be charged for another eviction.

## NOTICES MUST BE ACCURATE

For example purposes in the rest of this information guide we shall assume the following facts are true:

Larry Landlord has rented to Terry Tenant and Tabi Tenant, pursuant a written month to month rental agreement signed by both Terry and Tabi Tenant. The rent is \$1,000.00 per month due in advance on the first of the month, late if not received by the 5<sup>th</sup> of the month with a \$60.00 late fee. Larry Landlord suspects that Terry and Tabi have adult friends living with them even though the contract states the Tenants are suppose to be the only tenants living on the premises. Terry and Tabi have lived in the property for only six months.

Usually a legally sufficient notice must be served upon a tenant prior to filing an unlawful detainer action against a tenant. In most cases the notice will be a Three Day Notice to Pay The Rent or Quit and or a Thirty Day Notice to Quit.

If a tenant is behind in the payment of rent a notice to pay rent or quit should be served in most cases. **The notice must not over state amount of rent due by even one dollar.** If the rent owed is \$999.00 and the landlord asks for \$1,000.00 on the Notice to Pay or Quit the landlord will probably lose his case at trial and have to start the eviction all over again. This will cost him another eviction fee and 4-6 weeks time to recover possession of his property.

On a residential eviction most judges hold that a Three Day Notice to Pay or Quit may only demand rent, not late charges, security deposit, utility charges or any other charges. The landlord may serve a Three Day Notice to Perform Covenant or Quit to collect those charges but in most cases I would not recommend filing a case strictly based on uncollected late charges or other fees, even if the lease allows for such.

**If the tenant offers the full amount of rent demanded on a Three Day Notice to Pay or Quit, the landlord must accept the tender of rent by the tenant. A landlord does not have to accept a late or partial tender of the rent.**

As an example Larry serves a Three Day Notice to Pay or Quit which demands \$500.00 which correctly states the past to rent, who it is to be paid to, where it is to be paid, what hours payment

are to be accepted and a phone number. The notice is personally handed to Tabi Tenant on Monday the 10<sup>th</sup> of the month. If the Tenants offers the entire \$500.00 at any time from the 10<sup>th</sup> through and including the 13<sup>th</sup> of the month Larry Landlord must accept the tender of the rent.

Larry does not have to accept any amount less than \$500.00. Nor does Larry Landlord have to accept any money after the 13<sup>th</sup> of the month. However, always note why the tender was rejected, was it a "partial tender", or was it "tendered late"?

**If you accept any amount of money after the service of the notice you have waived your rights under the notice to proceed to evict your tenant.** In our example if you take \$20.00 from Tabi Tenant on the 20<sup>th</sup> of the month a new notice must be served.

This rule does not apply to commercial evictions under CCP section 1161.1.

### **Service of a 3-Day Notice to Pay or Quit**

The notice must be served on the tenants. Since Terry & Tabi Tenants in our example have both signed a written rental agreement with Larry, the notice can be served on only one of them. If the agreement had been oral the better policy would be to serve a separate notice on each Terry and Tabi. I always name Does 1-10, on a Three Day Notice and include any tenants who have signed the lease or any tenants that I know are living on the property. If there are persons living on the property and the landlord does not know who they are I strongly recommend that a pre-judgement form be served on the Tenants with the summons and complaint.

**It is important to know that if the rent is due on the 1<sup>st</sup> of the month it is really only due on the first business day of the month. Lets assume the 1<sup>st</sup> was a Sunday and Monday the 2<sup>nd</sup> was a legal holiday, the 1<sup>st</sup> business day would be the 3<sup>rd</sup> of the month and the 3-Day Notice to Pay or Quit could not be served until the 4<sup>th</sup> of the month.**

A notice may be served in any one of three ways. It maybe personally handed to the tenant. Personal service is effective as being handed to only one person on the notice. The tenant does not have to sign for the notice. If they will not take in their hand you drop it at their feet and tell them they are served. In our case that means handing it Terry or Tabi.

A notice may also be served by posting a copy on the door of the residence and mailing a copy to each tenant. You must attempt to serve Terry or Tabi in person, knock on the door and if nobody answers the door, attach the notice to the door firmly so it should not blow away, then mail a copy of the notice to the Tenants at their address. This is called "Posting and Mail, or Nail and Mail".

A third way to serve is when you knock on the door and a competent adult non-tenant such as Tabi's mother answers the door and says' "Tabi is not here". Larry should then hand the notice to Tabi's mother instruct her to give it to Tabi and Terry and ask what her name is then, take note of the name and a description of who he served it to. Larry then needs to mail a copy to Terry & Tabi Tenants.

After service of the notice is complete a **Proof of Service** should be filled out under penalty of perjury stating who was served, how, where, when and what, then signed and dated by the person who made the service. A copy of the notice served, proof of service and rental agreement if you have one will need to be supplied to our office prior to filing a case for review and attachment to your complaint. We also will require you to fill out an attorney client contract and questionnaire sheet.

### **30 DAY NOTICE TO QUIT**

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### **90 DAY NOTICE TO QUIT**

In a month to month tenancy either party may terminate the tenancy by the service of a Thirty Day Notice to Quit. In most cases a landlord does not have to give a reason and later be able to prove the reason if he/she wishes to serve a Thirty Day Notice.

Exceptions to this rule are if the lease is with government housing such as Section 8 or in a rent control area such as in LA or Santa Monica, then "Good Cause " must be stated on the notice and why. It is now generally believed if the lease involves government housing a 90-Day Notice to Quit must be served. On any type of notice to quit a landlord may not discriminate based upon race, religion, ethnic background, or marital status (unmarried persons living together), or sexual orientation.

A landlord may not serve a thirty day notice on a tenant because the tenant has made complaints about the property to a governmental agency, or has threatened to withhold rent. We prefer to know why you are serving a notice to quit on a tenant. It is important that we serve the proper notice for the proper reasons.

If a landlord desires to evict a tenant whether or not the tenant pays the rent due, a Three Day Notice to Pay or Quit may be served with a 30 Day Notice. The landlord is in essence telling the tenant that even if the rent is paid within the three days he still wants to have the tenant move. If the tenant does not pay the rent then unlawful detainer action is filed based upon the Three Day Notice to Pay or Quit. If the tenant does pay then at the expiration of the 30 Day Notice the unlawful detainer can be filed.

## **SERVICE OF UNLAWFUL DETAINERS**

Our office prepares, files and serves the Unlawful Detainer Action. Each tenant must be served individually. We hire a bonded registered process server to serve the Unlawful Detainer Action. This company has worked for us for over 15 years and is very dependable, and understands the need to for speedy service in a case. They will follow a legal procedure and get your tenant served as quick as legally possible.

**Once a tenant is personally served they have 5 days to respond to the complaint and file the proper paper work with the court.** After the process server has obtained "due diligence", (generally four or more attempts at different times of the day and night over a period of at least three days), the defendants may be served by substitute service. This means by leaving a copy with an adult in charge of the premises and mailing a copy to the person served. A defendant served by substitute service has fifteen days to respond to the complaint.

**If the tenants are avoiding service (will not come to the door) our office will request an order for posting from the court once the process server has obtained "due diligence".** It generally takes a judge 1 to 10 days to sign the order for posting. Once the order is signed by the judge the complaint is served by posting a copy on the door for each tenant/defendant and mailing a copy to them.

A defendant served by way of order for posting has 15 days to respond to the complaint. Obviously "Posting Orders", are the slowest way to serve the summons and complaint, thus we only will do that when all other efforts have failed to serve the tenants/defendants.

If the defendants do not timely respond to the complaint, a clerks judgment for possession is then filed with the court. Once the judgement has been entered by the clerk a writ of possession will be issued. The writ will then be taken to the Sheriff's office where the Sheriff will execute the writ taking some where between 10 and 21 days, depending upon the sheriff, court, time of year and if an Arrieta claim has been filed. The average time of a lockout after the writ has been issued is about 14 days.

## **TENANT'S RESPONSE**

Tenants usually file responses with the court solely to delay the process. If a tenant does file a response it is usually an answer, and then we can file a request for a trial date. The filing of the answer delays the issuance of the writ of possession by 10-20 days.

The trial of an unlawful detainer is a formal proceeding and the landlord or manager must come to court and bring their records including a leger card to court. This is extremely important if the tenant disputes the condition of the property or the amount of rent owed. The witness who comes to court must have personal knowledge of property, records and dealings with the tenants.

We expect your witness to show up at least ½ hour before the time of the trial and to be professionally dressed for court. Most courts have a dress code that they enforce. We will go over the answer and your testimony prior to the trial.

The attorney will ask all the questions that you will need to prove up your case. It is best if you just answer with a yes or a no. I do almost all of my appearances on my cases myself but, I can't be at two places at once and there will be times the courts schedule me that way. There will be occasions when I have another attorney appear for me. The other attorney and I will discuss your case prior to trial, and all the attorneys who appear for me are very experienced unlawful detainer trial attorneys who also sit as Judge Pro Tem. They will do a very professional job for you.

Tenants sometimes file other responses with the court. Motions to quash, motion to strike, demurrers, motion to set aside a default and various requests for stays. These motions are usually just delay tactics on the tenants part. However each of these require a court appearance by our office and hence an appearance fee.

## **DISCOVERY**

In an unlawful detainer full discovery is permitted but we find that it usually is not necessary to do discovery on the tenants. In some cases the tenant or tenants attorney will serve us with discovery. Some of the methods of discovery that might be used are depositions, interrogatories, demands for inspection of documents and other tangible things, requests for admissions.

There are tight time frames that discovery must be produced in an unlawful detainer action. Interrogatories are due within five days of service of them on the plaintiff. All discovery in an unlawful detainer action must be complete within 5 days of the trial date. Your trial maybe delayed if the discovery requested is not produced in a timely fashion. If your case involves discovery the cost to your eviction is going to increase. We try to resolve the discovery issue with opposing counsel before responding to the discovery to keep your costs down. Discovery is not part of a basic unlawful detainer and you will be billed for the work that is necessary to abide by the rules of discovery and keep your case moving forward.

## **WRIT OF POSSESSION**

Once a judgment has been obtained either by default or after trial a writ of possession must be issued. A writ is a court order for the Sheriff to evict tenants and to place the landlord back into

peaceful possession of the premises. **You do not have possession until the tenant gives you the keys to the property or the Sheriff returns possession to you. It is best to stay away from the property when the unlawful detainer is being processed.**

A writ must be posted on the premises by the Sheriff. The papers posted by the Sheriff let the tenant know when the Sheriff is going to evict them. This is usually 5 days after the writ is posted. All writs will state the lockout will occur at 6:00 A.M. *After you are informed of the actual time of the eviction, please don't tell the tenant.*

From the date the Sheriff receives the writ until the actual date of the lockout it takes 10-14 days. Our office is usually informed of the lockout date one or two days before it occurs.

**DON'T CALL US FOR THE LOCKOUT DATE, WE WILL CALL YOU AS SOON AS WE FIND OUT THE DATE.**

The landlord or agent must meet the Sheriff at the property for the lockout at the designated time. You must show up a half hour early and stay at least a half hour later before you call someone to find out about the Sheriff. You should have someone to change the locks for you when the Sheriff shows up. If nobody shows up to meet the Sheriff at the lockout, it will be canceled and you are looking at least ten days before the Sheriff will come back out.

**I would suggest having a locksmith change the locks on the property at the lock out.**

### **TENANTS WHO FILE BANKRUPTCY**

In California, tenants frequently file bankruptcy to delay the eviction process. When a tenant files bankruptcy, bankruptcy "stays" all state court actions against the tenant and in most instances will stop the eviction from proceeding against your tenant.

To proceed against the tenant, the landlord must file a Motion for Relief from the Automatic Stay in the Bankruptcy Court where the tenant filed Bankruptcy. This should be done along with a Request, to Shorten Time on the motion, if the landlord has already filed Notice on the tenant or has a Judgement for possession. The whole process of obtaining Relief to proceed will slow your eviction down from 10 to 30 days. If the landlord chooses not to file a Motion to get relief then it will delay your eviction up to 4 months and beyond depending on whether your tenant filed a Chapter 13 or Chapter 7. **It is important that a landlord file a Motion for Relief From the Automatic Stay immediately upon finding out the tenant filed Bankruptcy.** Our office can handle this for you but it is a separate fee that must be paid in advance.

### **ABANDONED PERSONAL PROPERTY**



Where personal property remains on the premises after a tenancy has been terminated and the premises have been vacated by the tenant, the landlord shall give written notice to the tenant and any other person the landlord reasonably believes is the owner of such personal property.

The notice for left personal property on the premises shall describe the property in a reasonably adequate way to permit the owner of the property to identify it. The notice shall advise the person to be that the reasonable costs of storage may be charged before the property is returned, where the property may be claimed, and the date before which the claim shall be made.

The date specified in the notice shall be a date not less than 15 days after the notice is personally delivered or, if mailed, not less than 18 days after the notice is deposited in the mail.

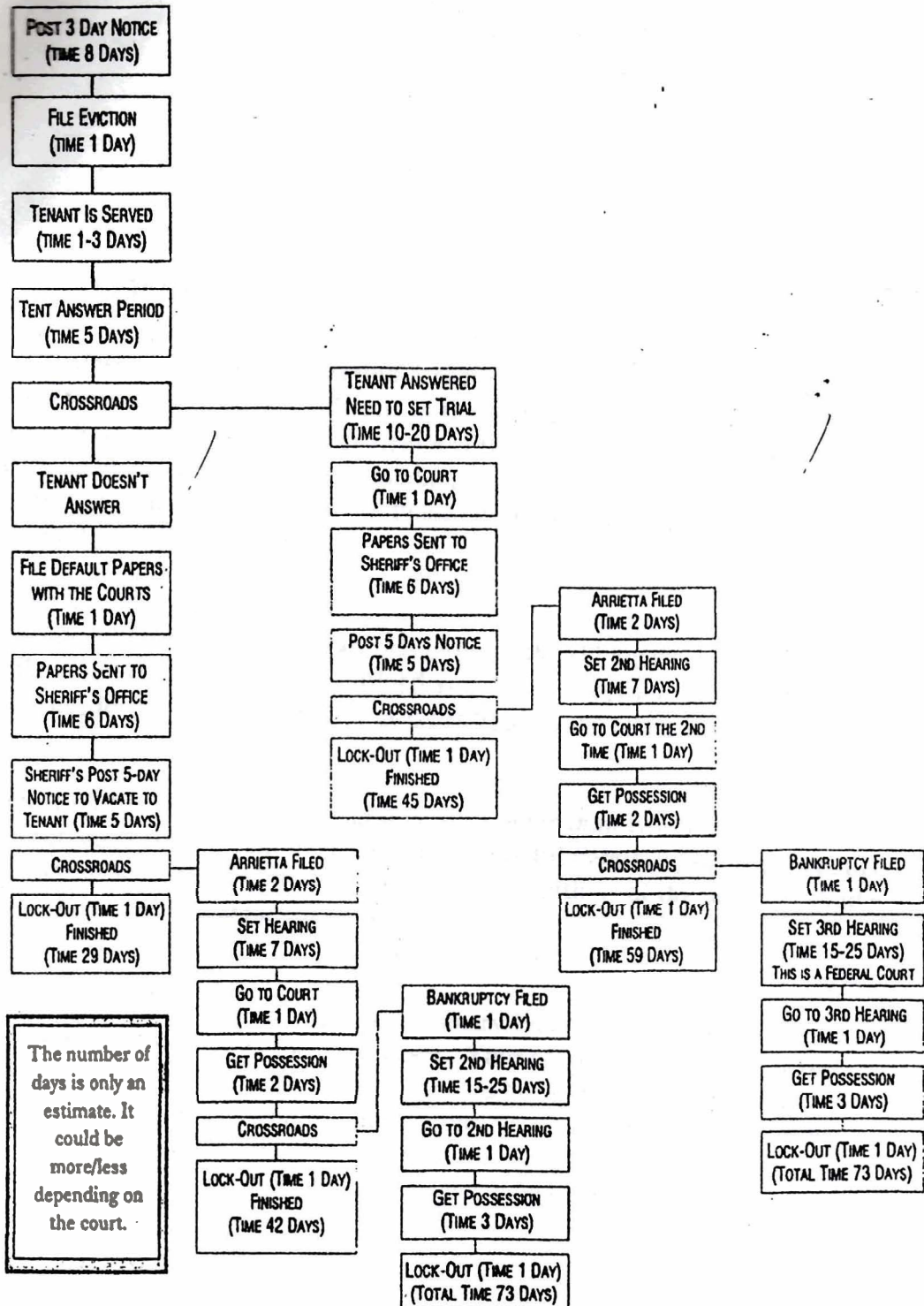
The notice should contain one of the two following statements:

1. If you fail to reclaim the property it will be sold at a public sale after notice of the sale has been given by publication. You have a right to bid on the property at sale. After the property is sold and the cost of storage, advertising, and sale are deducted, the remaining money will be turned over to the County. You may claim the remaining money at anytime within one year of the county receiving the money.

2. Because this property is believed to be worth than less than \$300.00 it maybe kept, sold, or destroyed without further notice if you fail to reclaim within the time indicated above.

**OUR FIRM STRONGLY SUGGESTS YOU WORK WITH YOUR FORMER TENANT TO HAVE HIM OR HER REMOVE THEIR OWN POSSESSIONS FROM THE PROPERTY EVEN IF YOU HAVE TO RENT A STORAGE PLACE FOR THEM AND PAY THE FIRST MONTH'S RENT.**

# ESTIMATED EVICTION TIME-LINE GUIDE



The number of days is only an estimate. It could be more/less depending on the court.