

SUPERIOR COURT OF CALIFORNIA

COUNTY OF BUTTE

Self-Help Assistance & Referral Program

EVICCTIONS

(UNLAWFUL DETAINERS)

Code of Civil Procedure section 1161 et seq.

1

LANDLORD - HOW TO GET STATED
Notices to Terminate

A lawsuit to evict a tenant is called an **unlawful detainer**. The eviction process begins when the tenant is given a notice from the landlord to move out. If the tenant does not move out in time, the landlord can file a lawsuit. The one who is bringing the lawsuit is called the **plaintiff**. The one who is being sued is called the **defendant**.

3-DAY NOTICES

A landlord may terminate a tenancy by giving a **Three Day Notice to Pay Rent or Vacate Premises** to the tenant(s), in the manner prescribed by Civil Procedure section 1162 *provided the tenant(s) has failed to pay rent and the rent is late pursuant to the rental agreement.*

A copy of a **Three-Day Notice to Pay Rent or Vacate Premises** is attached at the end of this section.

30-DAY NOTICES

A landlord may terminate a month-to-month (not a fixed term lease unless the lease has expired and the tenant(s) will not move) tenancy by giving a **Thirty (30) Day Notice to Quit** to the tenant(s), in the manner prescribed by Civil Procedure section 1162.

A copy of a **Thirty (30) Notice to Quit** is attached as the end of this section.

WARNING: A bill requiring landlords to provide tenants with a sixty (60) day eviction notice passed the California Assembly Committee in June, 2002. Please check updates regarding Civil Code section 1946 prior to preparing a serving a Thirty (30) Day Notice.

(For research regarding mobilehomes or trailer coaches see Civil Code section 798 et seq.)

(For research regarding commercial properties see Civil Code of Procedure 1161.1)

1. **Procedure.** Prepare an original, a copy for yourself, a client copy, a copy to be served and extra copies (to use in the case of *substituted service or service by posting (see below)*).

2. **Service.** *Serve a copy* the notice on the tenant and on any subtenant in actual occupation of the premises as described below. The landlord or the agent of the landlord may serve the notice.

(Civil Code section 1946; Code of Civil Procedure section 1162)

- a. *Personal Service:* By personally delivering a copy to the tenant(s).
- b. *Substituted Service:* If the tenant(s) is absent from the place of residence or their business, the notice may be left with a person at the residence over the age of 18 at either place *and* sending a copy through the mail *on the same date of substituted service*, addressed to the tenant(s) at the place of residence.
- c. *Service by Posting:* If the tenant cannot be found and you have been unable to properly serve by *substituted service*, then the notice can be served by affixing a copy in a conspicuous place on the property *and* sending a copy through the mail *on the same date of the posting*, to the tenant(s) at the place of residence.
- d. Complete a **Proof of Service** and keep the original of both the notice and Proof of Service.
- e. *Calendar* the date of termination so that any unlawful detainer proceedings may be promptly initiated if necessary.

A copy of a **Proof of Service** that is appropriate to use for this procedure is attached at the end of this section.

PLEASE NOTE: A landlord may terminate tenancy for other reasons, including failure of the tenant to perform a covenant of the lease. Please refer to Civil Code of Procedure section 1161 et seq.

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2

LANDLORD

SUMMONS & UNLAWFUL DETAINER COMPLAINT

1. **Counting the Time to File the Summons and Unlawful Detainer Complaint.**
You may file the Summons and Complaint the day following the expiration of the notice(s) you have served on the tenant(s), provided that the notices have not been “cured” (i.e., tenants have not moved [30-Day Notice] or you have not received any payment towards rent [3-Day Notice to Pay Rent or Quit]).

2. **Where to get the Summons and Unlawful Detainer Complaint Forms.** You can get the forms from the Self-Help Assistance & Referral Program site at 1931 Arlin Rhine Drive in Oroville, California or the courthouse where your case should be filed. Generally, your lawsuit should be filed within the court jurisdiction that is closest to the property in question.
3. **What does it Cost to File an Answer?** It costs \$97.30 to file your lawsuit. The fees will increase as of January 1, 2003. Please check with the clerk of the court to confirm the current filing fee. If your income is below a certain level, you can apply for a **waiver** of the filing fee. You can get a **fee waiver application** packet from the court clerk's office or from the SHARP center.
4. **Who may file an Unlawful Detainer action?** Only the owner of the property (**Plaintiff**) or the owner's attorney may file an action to recover possession of the owner's property.
5. **Who is named as Defendant in the action?** The tenants in possession of the property that you have served the notices upon that have not "cured" the notices.

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WARNING:

THE BUTTE COUNTY COURT'S SELF-HELP ASSISTANCE & REFERRAL PROGRAM CENTER IS NOT REPRESENTING YOU, OR TELLING YOU WHICH CHOICE TO MAKE. IT HAS ONLY ASSISTED YOU IN REPRESENTING YOURSELF BY PROVIDING LIMITED INFORMATION ABOUT YOUR OPTIONS. NO ATTORNEY FROM SHARP WILL APPEAR IN COURT TO REPRESENT YOU AT TRIAL OR ANY OTHER HEARING. YOU ARE REPRESENTING YOURSELF. THE SELF-HELP ASSISTANCE & REFERRAL PROGRAM STRONGLY RECOMMENDS THAT YOU SEEK THE ADVICE OF AN ATTORNEY IN THIS MATTER.

HOW TO COMPLETE YOUR SUMMONS & COMPLAINT

Complete the Summons and Complaint forms by typing (preferred) the information requested. If you cannot type the forms, make sure you print neatly using black ink.

Summons

Judicial Council Form No. 982

Under “NOTICE TO DEFENDANT:”

List tenants exactly as you have named them in the notice(s) and add Does 1 through 10.

Note: Does 1 through 10 will allow you to amend your Complaint prior to serving if you find you have misnamed, misspelled a name, or had to serve a notice on a tenant as a “DOE” because you did not know the tenant’s name and later discovered the name.

Under “YOU ARE BEING SUED BY PLAINTIFF:”

List the owner’s name, which will be you as only the owner can bring the action for recovery of the real property.

Under “The name and address of the court is:”

Type or Print the name of the court and the court’s address where you are filing your action.

Example:

Superior Court of California, County of Butte
No. One Court Street
Oroville, CA 95965

Under “The name, address, and telephone number of plaintiff’s attorney or plaintiff without an attorney, is:”:

Your name

Your Telephone Number

Your Street Address

Your Town, State

In Pro Per (*this indicates that you are representing yourself*)

Under the unlawful detainer assistant check the box for “did **not**”, unless you did pay a registered unlawful detainer assistant to assist you. If you did, the unlawful detainer assistant will be completing all of the documents.

A copy of the **Summons** is attached at the end of this section.

Complaint-Unlawful Detainer

(Judicial Council Form 982.1(90))

Complete the Complaint form by typing (preferred) the information requested. If you cannot type the forms, make sure you print neatly using black ink.

Completing the Caption

The top part of the form is called the **caption** and it looks like this:

- a. In the box put your name, address, and telephone number, just like the example above. Where it says “attorney for” put “In Pro Per”. This means you represent yourself.
- b. In the next box down, put the name and address of the court where you are filing your action. The example above shows the address for the Superior Court in Oroville, which may not be the court having jurisdiction over your real property.
- c. Complete the rest of the caption box with the names of the **parties** (plaintiff and defendant(s) exactly as you named them in the **Summons**). Check the box next to “DOES 1 through _____” and insert the number of Does you have put on the Summons.

d. Under Jurisdiction: The most likely response would be to check the first box (“ACTION IS A LIMITED CIVIL CASE”) and check the first box underneath, “Amount Demanded” (does not exceed \$10,000).

Note: It is very rare that the unpaid rent would exceed \$10,000.

e. Do not insert a case number. The court clerk will insert a case number when the case is filed.

COMPLETING THE COMPLAINT

NOTE: The example Complaint is drafted for the following circumstances:

- A. You, the owner of the real property, are representing yourself.
- B. A written rental agreement between you and the tenant(s) was entered into when the tenant(s) initially rented your property.
- C. The rental agreement has a provision for attorneys’ fees.
- D. You are evicting your tenant(s) because past due rent has not been paid to you.

- E. A Three-Day Notice to Pay Rent or Vacate the Premises has been properly served on the tenant(s).
- F. The time provided in the three-day notice has expired and the tenant(s) have failed to pay any portion of the rent.

IF YOUR SITUATION IS DIFFERENT THAN ABOVE, PLEASE REFER TO CODE OF CIVIL PROCEDURE SECTION 1161 ET SEQ., OR RETAIN THE SERVICES OF AN ATTORNEY FOR LEGAL ADVICE.

1. Identify Yourself. Type or print your name. Remember, you must be the legal owner of the real property in question. If this does not apply to your situation, please obtain legal advice or refer to Code of Civil Procedure 1161 et seq.

2(a)(1). Check box “an individual over the age of 18 years”. If this does not apply to your situation, please obtain legal advice or refer to Code of Civil Procedure 1161 et seq.

3. Type or print the exact address, city, state, zip code and county of the property. The address must match the address on the notice to terminate.

4. Check the first box (“as owner”). If this does not apply to your situation, please obtain legal advice or refer to Code of Civil Procedure 1161 et seq.

6(a). Type or print date of initial rental agreement and, following that, the names of tenant(s).

6(a)(1) Check box “month-to-month tenancy”. If this does not apply to your situation, please obtain legal advice or refer to Code of Civil Procedure 1161 et seq.

6(a)(2) Type or print amount of monthly rent and check boxes “monthly” & “first of the month”. If this does not apply to your situation, please obtain legal advice or refer to Code of Civil Procedure 1161 et seq.

6(b) Check box “written” if the rental agreement is a written agreement.

6(b)(1) Check box “plaintiff” if you signed the rental agreement or entered into an oral agreement with tenant(s) or check box “plaintiff’s agent” if you have an onsite

property manager who signed the rental agreement or entered into an oral rental agreement.

6(e) Check box. Make a copy of the rental agreement and type or print “Exhibit 1” at the bottom of each page (this will be attached to the Complaint).

PAGE 2 OF THE COMPLAINT

Completing the Short Caption.

At the top of pages 2 and 3 of the Complaint form there is a small caption box like this:

Put your name where it says “Plaintiff (*Name*):” and put the name of the first defendant (tenant) after “Defendant (*Name*):”. No case number is inserted.

7. Check box.

7(a). Type or print name(s) of tenant(s).

7(a)(1). Check box indicating that you served a “3-day notice to pay rent or quit”. If this does not apply to your situation, please obtain legal advice or refer to Code of Civil Procedure 1161 et seq.

7(d). Check box if you either used the 3-Day Notice provided in the information packet “Section 1” or another notice essentially the same that has an election of forfeiture. If this does not apply to your situation, please obtain legal advice or refer to Code of Civil Procedure 1161 et seq.

7(e). Check box. Make a copy of the termination Notice and Declaration of Service of Notice to Resident and type or print “Exhibit 2” at the bottom of each page (this will be attached to the Complaint).

8(a)(1). Check box if the notice to terminate was **personally served on the tenant(s)**. If you served the notices in any other manner, check either 8(a)(2) and complete requested information or 8(a)(3) and complete requested information. The other choices for service do not apply, please refer to code sections listed in this section if needed.

10. Check box and indicate at the end of the sentence the total amount of rent that was past due as you listed it on the 3-day notice.

11. Check box and fill in daily rental value (i.e., \$800 divided by 30 = \$26.67)

13. Check box if your written rental agreement provides for attorney fees.

17. Check the following boxes:

17(c) “past due rent of \$”(1600.00 per example only).

17(d) “reasonable attorney fees” (if you have checked box 13).

17(e) “forfeiture of the agreement” (if you checked box 7(d)).

17(f) “damages at the rate stated in item 11 from (*date*): Put in the first date following the date of the delinquent rent in the termination notice.

18. Type or print the number of pages you will be attaching to the Complaint

PAGE 3 OF THE COMPLAINT

19. Check box “did **not**”, unless you did pay an Unlawful Detainer Assistant to assist you. In that case, the Assistant would probably be completing these forms.

Type or print your name on the left and sign on the right.

Under Verification:

Type or print date and your name below and sign your name on the right. When you sign here, you are **swearing under oath** that everything you put in the Complaint is true.

A BLANK COPY OF THE “COMPLAINT - UNLAWFUL DETAINER”
IS ATTACHED AT THE END OF THIS PACKET

EXAMPLE COMPLAINT FOLLOWS

SUPERIOR COURT OF CALIFORNIA

COUNTY OF BUTTE

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Code of Civil Procedure section 1161 et seq.

2a

LANDLORD

CIVIL CASE COVER SHEET

CIVIL CASE COVER SHEET

The Civil Case Cover Sheet must be submitted to the court for filing along with the Summons and Complaint (Cal. Rules of Court, rule 982.2(a)). A sample completed form and a blank form are attached to the end of this section. This form is an informational sheet for the courts and is not served on the tenant(s).

SUPERIOR COURT OF CALIFORNIA

COUNTY OF BUTTE

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3

LANDLORD

PREPARING AND FILING THE CIVIL CASE COVER SHEET, SUMMONS AND UNLAWFUL DETAINER COMPLAINT

SUMMONS

You need to file your original **Summons with the blank Proof of Service attached to the Summons** at the court clerk's office. You should first make an extra copies of the Summons with the Proof of Service attached. You will need a copy for your-
self and enough copies to serve on your tenant(s).

COMPLAINT

1. Prepare the Complaint.

- a. After completion of the Complaint, you need to attach Exhibit "1" (a **copy** of the written rental agreement if a written agreement exists) and Exhibit "2" (the **original** termination notice and the **original** Declaration of

Service). With the **original Complaint** only, the court requires each exhibit to be tabbed on the bottom. This allows the clerk and the judicial officer to easily locate the exhibits. You will need to attach tabs to each exhibit and write on the tabs “Exhibit 1” and “Exhibit 2”.

- b. Make copies of the entire Complaint (with the exhibits). Make enough copies for yourself and copies to be served on the tenant(s). Staple the original and copies of the Complaint together in the top left corner. On the uppermost area of the right side of the first page of the copies of the Complaint, print “COPY” on each copy.
- c. When you go to the Court where the Summons and Complaint needs to be filed, go to the Clerk designated to accept “CIVIL” documents. You will need to pay the filing fee. You may qualify for a fee waiver. If you qualify for a fee waiver, you must complete the **Application for Waiver of Court Fees and Costs** and file the Application with your Summons and Complaint. For instructions on how to complete the fee waiver application see the packet called “*Waiver of Court Fees*”.
- d. The clerk will retain the original copy of the Complaint for the court files and return the copies to you along with the **original Summons** and copies of the Summons.

CIVIL CASE COVER SHEET

Prepare only one copy of the original Civil Case Cover Sheet for your records. **This form is not served on the tenant(s), but is an information form for the court.**

DO NOT LOSE THE ORIGINAL SUMMONS AS THIS DOCUMENT HAS TO BE RETURNED TO THE COURT AFTER YOU HAVE SERVED THE TENANT(S).

SUPERIOR COURT OF CALIFORNIA

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EVICTIONS

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4

LANDLORD **PREJUDGMENT CLAIM OF RIGHT OF** **POSSESSION**

Code of Civil Procedure section 415.46

Prejudgment Claim of Right of Possession

If you have any *unnamed* tenant(s) who appear to be or who may claim to have occupied the premises at the time of the filing of the Summons and Unlawful Detainer Complaint, service of the attached form will place everyone who lives in the rental unit that they may be evicted by court order, not just the tenant(s) named in the Summons and Complaint. This procedure shifts the burden to the unnamed occupants to add themselves as defendants to the action by timely filing a claim of right to possession. Whether or not they choose to so file, all unnamed occupants are thereafter barred from objecting to the enforcement of the eviction judgment (Code of Civil Procedure section 1174.3).

NOTE: IF THIS FORM IS SERVED, A DEFAULT JUDGMENT AND WRIT OF POSSESSION CANNOT BE OBTAINED FOR AN ADDITIONAL TEN (10) DAYS. THEREFORE, IT WOULD BE ON THE SIXTEENTH DAY FOLLOWING SERVICE ON THE TENANTS, INSTEAD OF THE SIXTH DAY, THAT A DEFAULT COULD BE OBTAINED AND A WRIT OF POSSESSION ISSUED TO EVICT THE KNOWN TENANTS.

Service of this form must be made with the Summons and Unlawful Detainer Complaint and must be made upon occupants by a marshal, sheriff, or registered process server pursuant to Code of Civil Procedure section 415.46.

PREPARATION OF FORM: TYPE OR PRINT ONLY THE NAME AND ADDRESS OF THE COURT, THE PLAINTIFF & DEFENDANT NAMES, & THE CASE NUMBER. GIVE ENOUGH COPIES TO YOUR PROCESS SERVER TO SERVE ON THE TENANT(S).

Please obtain legal advice or refer to Code of Civil Procedure section 415.46.

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Code of Civil Procedure section 1161 et seq.

5

LANDLORD SERVICE OF DOCUMENTS ON TENANT(S)

Code of Civil Procedure section 417.10(f)

Service & Proof of Service

WARNING: YOU, THE PLAINTIFF, CANNOT SERVE THE SUMMONS AND UNLAWFUL DETAINER COMPLAINT.

A PROCESS SERVICE IS THE MOST EFFICIENT METHOD OF SERVING THE DOCUMENTS AS THE TENANT(S) MAY TRY TO AVOID SERVICE AND PROCESS SERVERS HAVE THE EXPERIENCE TO EFFECT SERVICE PROPERLY. ADDITIONALLY, THE PROCESS SERVICE WILL COMPLETE THE PROOF OF SERVICE FOR YOU TO FILE WITH THE COURT. THE PROCESS SERVICE DOES CHARGE A FEE FOR THEIR SERVICES. PLEASE REFER TO A TELEPHONE BOOK FOR A PROCESS SERVICE IN YOUR AREA.

If you are unable to pay the fee for the process service, you may have a friend serve and complete the Proof of Service.

Attached is a sample completed Proof of Service when the tenant(s) was personally served. A **separate** Proof of Service must be completed for **each** tenant served.

Please refer to Code of Civil Procedure section 417.10(f) for *substituted service* as this method requires an additional document, a **declaration of diligence**. The Summons and Complaint may be served by “**Posting & Mailing**”, but requires a court order (Code of Civil Procedure section 415.45).

The completed **Proof of Service**, together with the **original Summons**, must be filed with the court. Be sure to make enough copies so you have filed copies for your records.

A blank Proof of Service form is attached at the end of this section.

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Code of Civil Procedure section 1161 et seq.

6

LANDLORD - DEFAULT UNLAWFUL DETAINER PROCEEDINGS

DEFAULT PROCEEDINGS

WHEN TO FILE THE REQUEST TO ENTER DEFAULT.

If the defendant fails to file an Answer with the court within five days of the effective date of personal service, you can file the Request to Enter Default and the other documents so that you can get possession of your property. Should the sixth day fall on a Saturday, Sunday, or holiday, you must add an additional day before you can file the default documents.

It is important that you are prepared to personally file your Default documents with the court on the morning of the sixth day after service as any delay will allow the defendant to file an Answer even though the time has expired. Essentially, after the time is expired, how the case proceeds is dictated by who files their documents with the court first. You may call the court and provide them with your case number to verify that an Answer has not been filed.

Exceptions to the five days. If a defendant has been served by any other method other than personal service, such as substitution service, or a Prejudgment Claim to Right of Possession was served with the Summons and Complaint, the Default documents cannot be filed until the sixteenth (16th) day following the effective date of service.

COMPLETING THE REQUEST TO ENTER DEFAULT

REMEMBER - THIS EXAMPLE IS BASED UPON THE SAME FOLLOWING FACTS AS THE EXAMPLE COMPLAINT:

- A. You, the owner of the real property, are representing yourself.
- B. A written rental agreement between you and the tenant(s) was entered into when the tenant(s) initially rented your property.
- C. The rental agreement has a provision for attorneys' fees.
- D. You are evicting your tenant(s) because past due rent has not been paid to you.
- E. A Three-Day Notice to Pay Rent or Vacate the Premises has been properly served on the tenant(s).
- F. The time provided in the three-day notice has expired and the tenant(s) have failed to pay any portion of the rent.

**IF YOUR SITUATION IS DIFFERENT THAN ABOVE, PLEASE REFER TO
CODE OF CIVIL PROCEDURE SECTION 1161 ET SEQ., OR RETAIN THE
SERVICES OF AN ATTORNEY FOR LEGAL ADVICE.**

INSTRUCTIONS

Caption: Complete as you did in the Complaint, except you must print/type the case number in the appropriate box on the right.
Check boxes: "ENTRY OF DEFAULT" & "CLERK'S JUDGMENT".

- 1.a. Type/print date complaint was filed.
- 1.b. Type/print Plaintiff, followed by your name.
- 1.c. Check box & Type/print defendant's name(s) who did not file an Answer.
- 1.e. Check box
- 1.e.(1) Check box
- 1.e.(2) Check box

NOTE: DO NOT COMPLETE MONEY JUDGMENT AREA IF YOU WANT THE CLERK TO ENTER A JUDGMENT FOR POSSESSION OF YOUR PROPERTY AT THIS TIME. YOU MAY PROCEED WITH A HEARING OR DECLARATION FOR A MONEY JUDGMENT AFTER YOU HAVE POSSESSION OF THE PROPERTY.

Date: Type/Print Date

Type/Print your name on the left and sign on the line on the right.

PAGE 2

Complete short caption as you did on the Complaint, except you must type in the case number in the box on the right.

4. Check box “did **not**” (if you did not pay a LDA to assist you).

5. Check box.

5.a. Check box “is not”

5.b. Check box “is not”

5.c. Check box “is not”

6.b. Check box “**mailed**”

6.b.(1) Type/Print date of mailing

Below the date, type the defendant(s) name(s) and address.

(YOU MUST MAIL A COPY OF THIS DOCUMENT TO EACH DEFENDANT ON THE DATE YOU HAVE STATED IN SECTION 6.b.(1).)

Type/Print Date below declaration under penalty of perjury.

Type/Print your name on left and sign on the line on the right.

- 7.a. Enter amount you paid for filing fees for the Complaint.
- 7.b. If you hired a process service to serve the Complaint, enter amount you paid a the service.
- 7.e. Enter the total amount of costs.

7.f. Check box “Costs and disbursements are waived.” NOTE: THIS IS NOT A MONEY JUDGMENT, BUT ONE FOR POSSESSION. YOU MAY OBTAIN A MONEY JUDGMENT FOLLOWING THE EVICTION.

Type/Print Date below declaration under penalty of perjury.

Type/Print your name on left and sign on the line on the right.

- 8. Check box if the defendant is not in the military. If the defendant is in the military, please refer to the code sections stated at the end of this item 8.

Type/Print Date below declaration under penalty of perjury.

Type/Print your name on left and sign on the line on the right.

YOU WILL NEED THE ORIGINAL AND TWO COPIES OF THIS DOCUMENT TO FILE WITH THE COURT AND TWO COPIES TO MAIL AS REFERRED TO ABOVE.

A COMPLETED EXAMPLE FOLLOWS THIS SECTION.

COMPLETING THE JUDGMENT BY CLERK FOR RESTITUTION OF PREMISES

(Local Form UD-001, BU-03)

Caption:

Type/Print Name of Court

Type/Print Street Address

Type/Print Mailing Address of Court (if different than street address)

Type/Print City, State & Zip Code

TYPE/PRINT CASE NUMBER IN BOX ON RIGHT

PLAINTIFF: Type/Print your name & address

DEFENDANT: Type/Print defendant(s) name(s) & address

APPLICATION FOR JUDGMENT FOR RESTITUTION OF PREMISES ONLY PURSUANT TO CCP SECTION 1169

Type/Print name(s) of defendant(s) on blank line(s).

Type/Print date and sign on the line on the right.

JUDGMENT BY DEFAULT BY CLERK - UNLAWFUL DETAINER

Type/Print defendant(s) name(s) on first blank line(s)

Type/Print the town the property is in that you are suing for possession following
“premises situated in”

Type/Print address exactly as you typed/printed it in the Complaint following
“described as follows”.

YOU WILL NEED AN ORIGINAL AND TWO COPIES TO FILE AT THE
COURT.

A COMPLETED EXAMPLE FOLLOWS THIS SECTION.

COMPLETING THE WRIT OF POSSESSION

(Code of Civil Procedure section 1169)

CAPTION: Complete exactly like the Complaint, but enter the case number in the box on the right.

In the box under the defendant(s) name(s) check boxes “POSSESSION OF” and “Real Property”.

1. Type/Print “Butte”

3. Type/Print “Plaintiff, YOUR NAME”

4. Type/Print name of one defendant per box and the address of the property.

5. **THE CLERK ENTERS THIS DATE. MAKE SURE THAT THE CLERK HAS STAMPED THE DATE IN THIS SECTION PRIOR TO LEAVING THE COURT.**

7.a. Check box “has not been requested.”

9. Check box

17. Type/Print \$7.00

18. Type/Print \$7.00

PAGE 2

Complete short caption, enter case number in the box on the right

9. Check box

- 9.a. Check box and fill in date of filing of Complaint where indicated.
- 9.a.(2) Check box
- 9.a.(2)(a) Enter daily rental amount. On the sample Complaint the daily amount is \$26.67.
- 9.a.(2)(b) A date & time needs to be typed/printed in this section. Each court has a specific date/time for these hearings. **Contact the court the day prior to completing this document for this information.**
- 9.e. Type/print address of the property exactly as you have on your Complaint.

YOU WILL NEED THE ORIGINAL AND FOUR COPIES OF THE WRIT AND A CHECK OR CASH IN THE AMOUNT OF \$7.00 FOR ISSUANCE OF THE WRIT.

A COMPLETED EXAMPLE FOLLOWS THIS SECTION.

SHERIFF'S INSTRUCTIONS

AFTER THE WRIT OF POSSESSION IS ISSUED.

AFTER THE CLERK ISSUES THE WRIT OF POSSESSION, YOU NEED TO TAKE THE ORIGINAL AND TWO COPIES TO THE BUTTE COUNTY SHERIFF'S OFFICE LOCATED AT 33 COUNTY CENTER DRIVE, OROVILLE, CALIFORNIA.

LETTER OF INSTRUCTION:

The Sheriff will require a letter of instruction. An example follows this section.

SHERIFF'S FEES:

The Sheriff requires payment in the amount of \$75.00 to complete the physical eviction process.

PHYSICAL EVICTION PROCESS:

The Sheriff's office will serve the Writ of Possession on the tenant(s). Approximately one week later, the Sheriff will contact you with the exact time and date for the physical eviction. Make sure someone is home to write down the message from the Sheriff's office or that you have an answering machine. The eviction will usually take place the day after the Sheriff notifies you. YOU MUST ARRANGE FOR SOMEONE TO BE PRESENT TO CHANGE THE LOCKS AT THE TIME OF THE EVICTION OR YOU MUST BE READY TO PERFORM THIS TASK.

YOU MUST BE PRESENT DURING THE PHYSICAL EVICTION. DO NOT BE LATE, THE SHERIFF WILL LEAVE AND YOU WILL HAVE TO RESCHEDULE AND PAY ANOTHER SHERIFF'S FEE. The Sheriff will handle the details of the physical eviction, but you are to be there to take possession of your property. Please follow the Sheriff's instructions completely. Once the tenants are removed, the locks can be changed. ONCE THE TENANTS HAVE

BEEN REMOVED FROM THE PREMISES, THERE IS NO LEGAL REASON FOR YOU TO ALLOW THEM TO RETURN.

In approximately ten (10) days the Sheriff will notify the court that the physical eviction has been completed by returning the original Writ of Possession to the court. You may then proceed with the money judgment if you wish.

COUNTY OF BUTTE

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7

**LANDLORD - CONTESTED UNLAWFUL
DETAINER PROCEEDINGS**

IF YOUR TENANT FILES AN ANSWER

If your tenant(s) files an Answer to the Unlawful Detainer Complaint, either party may request that the case be set for trial by filing an at-issue memorandum (local Butte County form “Memorandum to Set Case for Trial”, BU-06).

Trial of an unlawful detainer action is entitled to preference in setting so long as the tenant(s) remains in possession of the property. Trial date will be set within 20 days after filing the at-issue memorandum (Code of Civil Procedure section 1170.5). The adverse party must have at least five days notices of trial, or 10 days notice if served by mail (Code of Civil Procedure section 594), which is usually the case as the court clerk will mail a notice of the date and time of the trial to both parties. If the tenant(s) vacates the premises, the matter loses its urgency status and proceeds to trial without preference.

While the parties are entitled to trial by jury (Code of Civil Procedure section 1171), this will add to the costs of the party requesting a jury and will add to the length of the trial. Generally, an unlawful detainer trial without a jury lasts only a short time.

An example of a Memorandum to Set Case for Trial follows this section.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF BUTTE

EVICTIONS

(UNLAWFUL DETAINERS)

7a

Landlord - Preparing for Trial

Preparing Your Case For Trial

1. Determining the Trial Date.

The court will send you notice of the trial date at the address you put on the top of your Answer. If you have not received notice of a trial date within two

weeks after you file your Memorandum to Set Case for Trial, you should call the court. **BEFORE YOU MAKE THIS CALL, LOOK AT THE COPY OF THE COMPLAINT AND BE PREPARED TO GIVE THE CLERK YOUR CASE NUMBER.** The case number can be found in a box located midway on the right side of the form. You will need to give the case number to the clerk in order for the court to tell you whether a trial date has been set. As soon as you know the trial date, mark it on your calendar immediately so you do not forget to appear in court.

2. Discovering What Evidence the Tenant(s) Has Against You.

Usually you know what the tenant(s) is claiming because you can read it in the Answer, and you know how to prepare your defense to what you the tenant is claiming you have done or not done. Sometimes you may need to discover the basis of the tenant(s) claims that you were unaware of, and you need to find out before the trial so you can prepare to defend the eviction. Certain methods can be used to **discover** the other side's evidence. These methods are called **discovery**. If you need to do **discovery** in your case, you may use the law library at the main courthouse located at No. One Court Street in Oroville. The law librarian will direct you to the correct reference books regarding **discovery**.

3. Getting Your Evidence Ready for Trial.

Most eviction cases are conducted before a judge or commissioner in a short period of time. Evidence the court usually considers includes documents, such as rental agreements, notices to quit, letters between the landlord and tenant, and photographs of the condition of the property. The court also considers **testimony** of the parties, and when appropriate, testimony of other witnesses. **Testimony** is what a person tells the court under oath about what happened in the case. You should make copies of the documents, and an outline of your testimony that you wish to present in court so you will be prepared to present your case. This will help you to focus on the issues in the case.

It is often helpful to watch other eviction cases in the same courtroom in which your case is scheduled, before the date of your case. You can learn about court procedure, where to stand, how to speak to the court, and the time given each case. Ask the court clerk when the judge assigned to your case will be hearing other **unlawful detainer** (eviction) cases, so you can watch.

4. BE ON TIME FOR YOUR TRIAL. Come to the court at least ten minutes before the time set for your case. If you are late and the judge calls your case

when you are not there, you will lose without being able to give your side of the case.

5. **BE WELL PREPARED FOR TRIAL.** Bring all documents you need to prove your case. Have extra copies of each document you plan to give to the court, so you can give one copy to the other side first. Any defense the tenant(s) present to the court must have been stated in their **Answer**. The tenant(s) has the **burden of proof** for each **affirmative defense** that is put in the Answer. This means that the tenant(s) must convince the court that the evidence in the case supports their defense more than it supports the your side. The same would apply to the landlord should the court supports the tenant's defenses.

THE BUTTE COUNTY SELF-HELP ASSISTANCE & REFERRAL PROGRAM IS NOT REPRESENTING YOU. IT HAS ONLY ASSISTED YOU IN REPRESENTING YOURSELF BY PROVIDING LIMITED INFORMATION ABOUT APPEARING IN COURT. NO ATTORNEY FROM THE CENTER WILL APPEAR IN COURT TO REPRESENT YOU AT TRIAL OR ANY OTHER HEARING. YOU ARE REPRESENTING YOURSELF. THE CENTER STRONGLY RECOMMENDS THAT YOU SEEK THE SERVICES OF AN ATTORNEY IN THIS MATTER IF YOU CAN.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF BUTTE

Self-Help Assistance & Referral Program

EVICCTIONS

(UNLAWFUL DETAINERS)

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LANDLORD

JUDGMENT, MEMORANDUM OF COSTS & EVICTION

1. PREPARE MEMORANDUM OF COSTS (Form MC-010)

Prepare a Memorandum of Costs. The costs would include monies spent to bring this action by you, such as filing fees and process service fees. In the example following this section, the filing fees have been included and payment to process service for serving the Complaint. In this example, 2 people were served and the cost is per person served.

This form must be mailed to the defendant(s) (tenant(s)). THIS FORM CANNOT BE MAILED BY YOU, BUT MUST BE MAILED AND THE PROOF

OF SERVICE COMPLETED BY A PERSON OVER THE AGE OF 18 WHO IS NOT A PARTY TO THE ACTION.

AN EXAMPLE OF THIS FORM FOLLOWS THIS SECTION

2. PREPARE THE JUDGMENT BY COURT (Butte County Local Form BU-04).

A. Caption:

Type/print the court name & address on the left top portion.

Type/print the case number on the right top portion.

Type/print your name/address in the left box under “Plaintiff”.

Type/print defendant’s name/address in the right box under “Defendant”.

B. Content of Judgment.

i. Insert date of trial.

ii. Type/print “In Pro Per” following “Plaintiff(s) appearing by attorney(s):

iii. Type/print “In Pro Per” following “Defendant(s) appearing by attorney(s):

iv. Type/print “Not” following “The Court, having considered the evidence and findings”.

v. Type/print Your Name following “PLAINTIFF(S):”

vi. Type/print defendant(s)/tenant(s) names following “recover from the DEFENDANT(S):”

vii. Check box before “restitution and possession of those premises..”

viii. Insert the money judgment:

Principal: This figure is the amount the Judge declares in court that is awarded to you. This figure includes the amount of rental arrearages in the 3-Day Notice, plus the daily rental amount up to the date of trial.

Attorney Fees: -0-

Interest: -0-

Costs: In example of Memorandum of Costs, this figure was \$157.30

TOTAL: In the example, this figures adds up to \$2,504.06. Of course, your exact amount will be different.

AN EXAMPLE OF THIS FORM FOLLOWS THIS SECTION

3. PREPARE THE WRIT OF EXECUTION (MONEY JUDGMENT) & POSSESSION OF REAL PROPERTY.

CAPTION: Complete exactly like the Complaint, but enter the case number in the box on the right.

In the box under the defendant(s) name(s) check boxes “EXECUTION” & “POSSESSION OF” and “Real Property”.

1. Type/Print “Butte”

3. Type/Print “Plaintiff, YOUR NAME”

4. Type/Print name of one defendant per box and the address of the property.

5. THE CLERK ENTERS THIS DATE. MAKE SURE THAT THE CLERK HAS STAMPED THE DATE IN THIS SECTION PRIOR TO LEAVING THE COURT.

7.a. Check box “has not been requested.”

9. Check box

11. Enter the total amount of the judgment from your Judgment by Trial form.

12. Enter -0- after “Costs after judgment”

Note: Each line between #12 and #19 must be filled in, even if the amount is -0-

13. Enter judgment amount following “Subtotal”.

14. Enter -0- following “Credits”. (This is presuming the defendants have not paid you since the trial.

15. Enter judgment amount following “Subtotal”.

16. Enter -0- following “Interest”.
17. Enter \$7.00 for the fee for issuance of the Writ.
18. Add the judgment amount & \$7.00 for the Total and insert.
19. This is a daily interest on your judgment, should you wish to pursue collection.
To calculate this amount:
Judgment amount divided by 365 (days in year) x .10
Per example: \$2504.06 divided by 365 = 6.86 x .10 = 0.67

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Complete short caption, enter case number in the box on the right

9. Check box
- 9.a. Check box and fill in date of filing of Complaint where indicated.
- 9.a.(2) Check box
- 9.a.(2)(a) Enter daily rental amount. On the sample Complaint the daily amount is \$26.67.
- 9.a.(2)(b) A date & time needs to be typed/printed in this section. Each court has a specific date/time for these hearings. **Contact the court the day prior to completing this document for this information.**
- 9.e. Type/print address of the property exactly as you have on your Complaint.

YOU WILL NEED TO FILE WITH THE COURT THE ORIGINAL AND FOUR COPIES OF THE WRIT AND A CHECK OR CASH IN THE AMOUNT OF \$7.00 FOR ISSUANCE OF THE WRIT.

A COMPLETED EXAMPLE FOLLOWS THIS SECTION.

YOU WILL NEED AN ORIGINAL AND TWO COPIES OF THE JUDGMENT AND AN ORIGINAL AND THREE COPIES (ONE COPY TO MAIL) OF THE MEMORANDUM OF COSTS.

ALL THREE DOCUMENTS AND THE CORRECT AMOUNT OF COPIES NEED TO BE FILED WITH THE COURT.

SHERIFF AND THE EVICTION

AFTER THE WRIT OF POSSESSION IS ISSUED.

AFTER THE CLERK ISSUES THE WRIT OF POSSESSION, YOU NEED TO TAKE THE ORIGINAL AND TWO COPIES TO THE BUTTE COUNTY SHERIFF'S OFFICE LOCATED AT 33 COUNTY CENTER DRIVE, OROVILLE, CALIFORNIA.

LETTER OF INSTRUCTION:

The Sheriff will require a letter of instruction. An example follows this section.

SHERIFF'S FEES:

The Sheriff requires payment in the amount of \$75.00 to complete the physical eviction process.

PHYSICAL EVICTION PROCESS:

The Sheriff's office will serve the Writ of Possession on the tenant(s). Approximately one week later, the Sheriff will contact you with the exact time and date for the physical eviction. Make sure someone is home to write down the message from the Sheriff's office or that you have an answering machine. The eviction will usually take place the day after the Sheriff notifies you. YOU MUST ARRANGE FOR SOMEONE TO BE PRESENT TO CHANGE THE LOCKS AT THE TIME OF THE EVICTION OR YOU MUST BE READY TO PERFORM THIS TASK.

YOU MUST BE PRESENT DURING THE PHYSICAL EVICTION. DO NOT BE LATE, THE SHERIFF WILL LEAVE AND YOU WILL HAVE TO RESCHEDULE AND PAY ANOTHER SHERIFF'S FEE. The Sheriff will handle the details of the physical eviction, but you are to be there to take possession of your property. Please follow the Sheriff's instructions completely. Once the tenants are removed, the locks can be changed. ONCE THE TENANTS HAVE BEEN REMOVED FROM THE PREMISES, THERE IS NO LEGAL REASON FOR YOU TO ALLOW THEM TO RETURN.

In approximately ten (10) days the Sheriff will notify the court that the physical eviction has been completed by returning the original Writ of Possession to the court. You may then proceed with the money judgment if you wish.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF BUTTE

Self-Help Assistance & Referral Program

EVICTIONS

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LANDLORD

Blank Forms