

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

**SP11-05**

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Title	Action Requested
Unlawful Detainer: Form to Be Used to Answer Unlawful Detainer Complaint	Review and submit comments by June 30, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form UD-105	January 1, 2012
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Anne Ronan, 415-865-8933 anne.ronan@jud.ca.gov
	Bruce Greenlee, (415) 865-7698 bruce.greenlee@jud.ca.gov

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### Summary

The Civil and Small Claims Advisory Committee proposes that, effective January 1, 2012, the Judicial Council revise *Answer—Unlawful Detainer* (form UD-105). The revision is required by Code of Civil Procedure section 1161.3 (Sen. Bill 782; Stats. 2010, chapter 626). A copy of the proposed revised UD-105 is attached.

### Discussion

#### Legislative implementation

Code of Civil Procedure section 1161.3, added by 2010 legislation, creates an affirmative defense to eviction (unlawful detainer) if the tenant has been the victim of domestic violence, sexual assault, or stalking. The statute provides methods of documentation of domestic violence, sexual assault, or stalking.<sup>1</sup> It authorizes eviction on three days' notice if either (1) the tenant allows the perpetrator to visit the property; or (2) the landlord reasonably believes that the presence of the perpetrator poses a physical threat to others or to a tenant's right to quiet possession.<sup>2</sup> The statute also mandates that the Judicial Council shall, on or before January 1, 2012, develop a new form or revise an existing form that may be used by a party to assert in the responsive pleading the grounds set forth in this section as an affirmative defense to an unlawful

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<sup>1</sup> Code Civ. Proc., § 1161.3(a)(1).

<sup>2</sup> Code Civ. Proc., § 1161.3(b).

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

detainer action.<sup>3</sup>

## **Changes to Judicial Council form UD-105**

### ***Statutory compliance***

An additional affirmative defense has been added to item 3, which sets forth various affirmative defenses that the tenant may plead. Item 3i now provides: “Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, or stalking.” This addition meets the legislative requirement in Code of Civil Procedure section 1161.3(e).

In conformance with the other items for affirmative defenses on this form, the proposed text for item 3i provides a summary description of the defense, without including a detailed list of all elements that must be proven. Comment is requested on whether the phrase “in violation of Code of Civil Procedure section 1161.3” should be added to the end of the proposed item, to essentially incorporate the other elements of the statutory defense into the item.

Previous items 3i and 3j have been renumbered as 3j and 3k.

### ***Revised caption***

Currently, form design must take into account the need to make the forms compatible with electronic forms generation and assembly, while still making them workable for self-represented litigants who handwrite them. To this end, the caption has been revised to capture information in separately identified fields for attorney or party name, attorney bar number, law firm name, street address, city, state, and zip code. Previously, this information was entered in undifferentiated and unlabeled open text lines.

This change will allow the form to better integrate with the California Case Management System, which needs to receive each item of caption data separately in order to populate other forms and documents with the data. It will also facilitate integration of the form into an automated document assembly process (smart forms).

### ***Overflow instructions***

Overflow instructions have been added at items 2b(1), 2b(2), 4b, 4c, and 5e. Overflow instructions alert the user to create an attachment if the response for the item will exceed the available space on the face of the form. Current Judicial Council forms overflow format is to place the entire answer on the attachment page rather than to split the answer between the face of the form and an attachment page. Therefore, the box at form item 3j (now 3k) indicating that the answer is “continued” on an attachment page has been deleted. The current format is also to place the overflow instruction before the field so that the user will consider whether an

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<sup>3</sup> Code Civ. Proc., § 1161.3(e).

attachment will be needed before starting to enter the answer in the field. These changes also facilitate providing for overflow within an automated document assembly process.

***Short title***

The short title for party names formerly at the top of page 2 of the form has been deleted.

Judicial officers report that there is no need for this component. The case number item remains at the top of the second page.

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: STATE BAR NO.: FIRM NAME: ADDRESS: CITY: STATE: ZIP CODE: E-MAIL (Optional): TELEPHONE NO.: ATTORNEY FOR (Name): FAX NO. (Optional):		<b>FOR COURT USE ONLY</b>  <b>DRAFT 3 BG</b> <b>April 27, 2011</b>  <b>Not Approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF: DEFENDANT:		CASE NUMBER:
<b>ANSWER—Unlawful Detainer</b>		

1. Defendant (each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs):

answers the complaint as follows:

2. **Check ONLY ONE of the next two boxes:**

- a.  Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000.)
- b.  Defendant admits that all of the statements of the complaint are true EXCEPT:
- (1) Defendant claims the following statements of the complaint are false (use paragraph numbers from the complaint or explain):  Complete answer is set forth on Attachment 2b(1).
- (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (use paragraph numbers from the complaint or explain):  Complete answer is set forth on Attachment 2b(2).

3. **AFFIRMATIVE DEFENSES** (**NOTE:** For each box checked, you must state brief facts to support it in item 3k (top of page 2)).

- a.  (nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.
- b.  (nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c.  (nonpayment of rent only) On (date): before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d.  Plaintiff waived, changed, or canceled the notice to quit.
- e.  Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- f.  By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or laws of the United States or California.
- g.  Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):
- (Also, briefly state in item 3k the facts showing violation of the ordinance.)
- h.  Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- i.  Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, or stalking.
- j.  Other affirmative defenses are stated in item 3k.

CASE NUMBER: [ ]

3. AFFIRMATIVE DEFENSES (cont'd)

k. Facts supporting affirmative defenses checked above (identify each item separately by its letter from page one):

[ ] All the facts are stated in Attachment 3k.

4. OTHER STATEMENTS

a. [ ] Defendant vacated the premises on (date):

b. [ ] The fair rental value of the premises alleged in the complaint is excessive (explain):

[ ] Explained in Attachment 4b.

c. [ ] Other (specify):

[ ] Specified in Attachment 4c.

5. DEFENDANT REQUESTS

a. that plaintiff take nothing requested in the complaint.

b. costs incurred in this proceeding.

c. [ ] reasonable attorney fees.

d. [ ] that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.

e. [ ] Other (specify):

[ ] Specified in Attachment 5e.

6. Number of pages attached:

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code §§ 6400—6415)

7. (Must be completed in all cases) An unlawful detainer assistant [ ] did not [ ] did for compensation give advice or assistance with this form. (If defendant has received any help or advice for pay from an unlawful detainer assistant, state:

a. Assistant's name:

b. Telephone No.:

c. Street address, city, and zip code:

d. County of registration:

e. Registration No.:

f. Expires on (date):

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF DEFENDANT)

## Item SP11-05 Response Form

**Title:** **Unlawful Detainer: Form to Be Used to Answer Unlawful Detainer Complaint**  
(revise form UD-105)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

Mail: Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

**DEADLINE FOR COMMENT: 5:00 p.m., Thursday, June 30, 2011**

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*