

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SP20-07

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**Title**

Unlawful Detainers: Revised Answer Form to Implement Assembly Bill 3088

**Proposed Rules, Forms, Standards, or Statutes**

Revise form UD-105

**Proposed by**

Civil and Small Claims Advisory Committee  
Hon. Ann I. Jones, Chair

**Action Requested**

Review and submit comments by 12 noon on October 23, 2020

**Proposed Effective Date**

Revised form is effective October 5, 2020, and is circulating for comment post-announcement

**Contact**

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### Executive Summary and Origin

The enactment of the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (Assem. Bill 3088; Stats. 2020, ch. 37) changes the practice and procedures relating to all residential unlawful detainer actions from now until January 31, 2021, and for a longer period for actions based on unpaid rent or other charges due at any time between March 1, 2020, and January 31, 2021. The Judicial Council recently approved new and revised forms to assist courts in determining how to properly proceed with actions under the new law, and to assist parties in understanding their rights and responsibilities.

The revised *Answer—Unlawful Detainer* (form UD-105) was approved prior to circulation for comment so that it would be available for defendants on October 5, 2020, the date when courts were authorized to proceed under the new law with actions based on failure to pay rent or other charges. The Civil and Small Claims Advisory Committee is now circulating the revised form and seeking comments following its approval. The committee will recommend further revisions to the council based on the comments, if appropriate.

### The Proposal

Assembly Bill 3088, which includes the COVID-19 Tenant Relief Act of 2020 (adding sections 1179.01 through 1179.07 to the Code of Civil Procedure), was enacted as urgency legislation, and so put in place new provisions addressing unlawful detainer actions that are already in effect. (See Link A.) The bill provides, among other things, certain protections to residential tenants being terminated for failure to pay rent due from March 1, 2020, through January 31, 2021. In

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.  
It is circulated for comment purposes only.*

order for courts to determine whether, in light of these new protections, judgments may issue on unlawful detainer cases over the coming months, plaintiffs will need to provide information beyond the allegations contained in the Judicial Council form *Complaint—Unlawful Detainer* (form UD-100) or included in individually drafted complaints prior to the enactment of AB 3088.

A new form, *Plaintiff's Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101), was developed by the Civil and Small Claims Advisory Committee and ultimately adopted by the council to provide the new information required by courts under AB 3088. (See Link B.) When that form was circulated for public comment, many commenters suggested that a revised answer form should be developed and provided at the same time, to allow defendants to respond to any allegations raised in new form UD-101, and to raise any affirmative defenses that might be available to defendants under the new law. The Civil and Small Claims Advisory Committee agreed, and recommended that a revised *Answer—Unlawful Detainer* (form UD-105) be put into place at the same time as new form UD-101. (See Link B.)

The approved revisions to form UD-105 were two-fold:

- Added new items in which a defendant may deny any of the supplemental allegations provided in form UD-101, either as part of a general denial (item 2a) or a specific denial (items 2b(3) and (4)); and
- Added new affirmative defenses at items 3l and 3m, adding to the checklist in the form those affirmative defenses that a defendant can raise under AB 3088, plus two under federal eviction protections. In addition, there is an “other” item for any affirmative defenses under AB 3088’s COVID-19 Tenant Relief Act of 2020 or local COVID-19–related ordinances to cover any affirmative defenses not identified here. (Item 3m(7).)

Because there was not sufficient time between when the comments were received and the effective date of the form to circulate revised form UD-105 for public comment before its approval by the council, it is being circulated now. The advisory committee is seeking comments particularly on whether any additional affirmative defenses should be included, and whether any of the new affirmative defenses on the form should be revised.

### **Alternatives Considered**

The advisory committee considered not revising form UD-105, which has, at the end of the list of affirmative defenses in item 3, an item for “other affirmative defenses” that a defendant could use to raise any defenses available for the next several months under AB 3088. However, in light of the comments received in response to new form UD-101 that a revised answer form be provided at the same time as that form, to provide defendants with a form that more specifically addresses the issues raised under AB 3088, the committee concluded that the revisions were appropriate.

## Fiscal and Operational Impacts

Although AB 3088 will have a significant impact on court operations, the revised answer form should assist courts in dealing with that impact, by making it easier for parties, especially self-represented parties, to provide responsive pleadings in unlawful detainer proceedings that are in compliance with the new law. Judicial officers and self-help center staff will need to be trained on the revised answer form and what it contains.

### Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Would it be appropriate to add an affirmative defense that defendant has provided a declaration of financial distress covering all months between September 1 and January 31 that are at issue in the action and has paid 25 percent of rent or other financial obligations arising from the tenancy due during those months?
- Are there additional affirmative defenses that may be made under AB 3088 or federal eviction law that should be added to item 3 on the form?
- Would it be appropriate to have the affirmative defense of having served a declaration under the Centers for Disease Control and Prevention’s temporary eviction moratorium order (see Link C) as a standalone affirmative defense (rather than as part of item 3m)?
- Would it be appropriate to have the affirmative defense of “other” violation of the COVID-19 Tenant Relief Act of 2020 or a local COVID-19–related ordinance regarding evictions as a standalone affirmative defense (rather than as part of item 3m)?
- Are there other revisions that it would be appropriate to make to the affirmative defenses in items 3l or 3m?

### Attachments and Links

1. Form UD-105, at pages 4–7
2. Link A: Assembly Bill 3088,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB3088](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB3088)
3. Link B: Jud. Council of Cal., Circulating Order Memorandum CO-20-15 (Sept. 30, 2020),  
<https://jcc.legistar.com/View.ashx?M=M&ID=807953&GUID=7047037D-7F4C-4ED2-B640-AF38367CC2F8>
4. Link C: *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, 85 Fed. Reg. 55292, [www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-COVID-19](http://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-COVID-19)

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:  STATE:                      ZIP CODE: FAX NO.:	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF: DEFENDANT:		
<b>ANSWER—UNLAWFUL DETAINER</b>		CASE NUMBER:

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 and of the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101). (Do not check this box if the complaint demands more than \$1,000.)
- b.  Defendant admits that all of the statements of the complaint and of the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are true EXCEPT:
  - (1) Defendant claims the following statements of the complaint are false (state paragraph numbers from the complaint or explain below or, if more room needed, on form MC-025):  Explanation is on MC-025, titled as Attachment 2b(1).
  - (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (state paragraph numbers from the complaint or explain below or, if more room needed, on form MC-025):  Explanation is on MC-025, titled as Attachment 2b(2).
  - (3) Defendant claims the following statements on the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are false (state paragraph numbers from form UD-101 or explain below or, if more room needed, on form MC-025):  Explanation is on MC-025, titled as Attachment 2b(3).
  - (4) Defendant has no information or belief that the following statements on the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are true, so defendant denies them (state paragraph numbers from form UD-101 or explain below or, if more room needed, on form MC-025):  Explanation is on MC-025, titled as Attachment 2b(4).

CASE NUMBER:

3. AFFIRMATIVE DEFENSES (**NOTE:** For each box checked, you must state brief facts to support it in item 3o (page 3) or, if more room needed, on form MC-025.)
- 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 the 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 3o the facts showing violation of the ordinance.)
- h.  Plaintiff's demand for possession is subject to the Tenant Protection Act, Civil Code section 1946.2 or 1947.12, and is not in compliance with the act. (Check all that apply and briefly state in item 3o the facts that support each.)
- (1)  Plaintiff failed to state a just cause for termination of tenancy in the written notice to terminate.
- (2)  Plaintiff failed to provide an opportunity to cure any alleged violations of terms and conditions of the lease (other than payment of rent) as required under Civ. Code, § 1946.2(c).
- (3)  Plaintiff failed to comply with the relocation assistance requirements of Civ. Code, § 1946.2(d).
- (4)  Plaintiff has raised the rent more than the amount allowed under Civ. Code, § 1946.12, and the only unpaid rent is the unauthorized amount.
- (5)  Plaintiff violated the Tenant Protection Act in another manner that defeats the complaint.
- i.  Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- j.  Plaintiff seeks to evict defendant based on an act against defendant or a member of defendant's household that constitutes domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (This defense requires one of the following: (1) a temporary restraining order, protective order, or police report that is not more than 180 days old; OR (2) a signed statement from a qualified third party (e.g., a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist) concerning the injuries or abuse resulting from these acts.)
- k.  Plaintiff seeks to evict defendant based on defendant or another person calling the police or emergency assistance (e.g., ambulance) by or on behalf of a victim of abuse, a victim of crime, or an individual in an emergency when defendant or the other person believed that assistance was necessary.
- l.  Plaintiff's demand for possession is in retaliation for nonpayment of rent or other financial obligations due between March 1, 2020, and January 31, 2021, even though it is alleged to be based on other reasons. (Civ. Code, § 1942.5(d).)
- m.  Plaintiff's demand for possession is based on nonpayment of rent or other financial obligations due between March 1, 2020, and January 31, 2021, and (check all that apply):
- (1)  Plaintiff did not serve the required 15-day notice. (Code Civ. Proc., § 1179.03(b) or (c).)
- (2)  Plaintiff did not provide an unsigned declaration of COVID-19-related financial distress with the 15-day notice. (Code Civ. Proc., § 1179.03(b) or (c).)
- (3)  Plaintiff identified defendant as a "high-income tenant" in the 15-day notice, but plaintiff did not possess proof of income establishing that at the time the notice was served.

CASE NUMBER:

- m. (4)  Defendant provided the following declaration to plaintiff (*check all that apply and describe when and how provided*):
- (a)  Declaration of COVID-19–related financial distress (Code Civ. Proc., § 1179.03(b) or (c))  
(*describe when and how delivered*):
- (b)  Declaration under penalty of perjury for the Centers for Disease Control and Prevention's temporary halt in evictions to prevent further spread of COVID-19 (85 Federal Register at 55297)  
(*describe when and how provided*):
- (5)  Defendant is currently filing or has already filed a declaration of COVID-19-related financial distress with the court.  
(Code Civ. Proc. § 1179.03(h).)
- (6)  Plaintiff violated the federal CARES Act because the property is covered by that act and
- (a)  The federally-backed mortgage on the property was in forbearance when plaintiff brought the action. (15 U.S.C. § 9057.)
- (b)  The plaintiff did not give the required 30 days' notice. (15 U.S.C. § 9058(c).)
- (7)  Plaintiff violated the COVID-19 Tenant Relief Act of 2020 (Code Civ. Proc., § 1179.01 et seq.) or a local COVID-19–related ordinance regarding evictions in some other way (*briefly state facts describing this in item o*).
- n.  Other affirmative defenses are stated in item 3o.
- o. (*Provide facts for each item checked above, either below, or, if more room needed, on form MC-025*):
- Description of facts is on MC-025, titled as Attachment 3o.

## 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 below or, if more room needed, on form MC-025*):

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4. b.  Explanation is on MC-025, titled as Attachment 4b.

c.  Other (specify below or, if more room needed, on form MC-025 in attachment):  
 Other statements are on MC-025, titled as 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 below or on form MC-025):  
 All other requests are stated on MC-025, titled as 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 number:
- c. Street address, city, and zip code:
- d. County of registration:
- e. Registration number:
- f. Expiration date:

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless defendant's attorney signs.)

(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:	▶	(SIGNATURE OF DEFENDANT)
(TYPE OR PRINT NAME)		