

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF BUTTE**

**Self-Help Assistance & Referral Program**

# **EVICTIONS**

**(UNLAWFUL DETAINERS)**

**1**

**Answering, settling or defaulting**

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**. If you are sued, you have several choices:

1. You can defend yourself by filing an Answer to the lawsuit in court. Special forms are used, which you can get from the Self-Help Assistance & Referral site or the court. To see if you have a legal defense, read the packet **Legal Reasons Why I Should Not Be Evicted**.
2. You can choose not to defend yourself and allow the landlord to get a **default** judgment against you. A **default** means that you fail to answer the Complaint in the time required by law. If you allow a default to be entered against you, you CANNOT defend yourself in the case, and you may be forced to move from the property as early as 11 days from when you received the Complaint. **WARNING:** A judgment against you could show on your credit report and make it harder for you to rent another place.
3. You can try to reach an agreement with the landlord. If you reach an agreement BE CAREFUL to make sure the landlord **dismisses** the lawsuit before the time is up for you to file an Answer. Otherwise, a default may still be entered against you. You can check to make sure the case is **dismissed** by calling the court where the Complaint was filed. You will need to give the case number to the court clerk to find out this information.

**IF YOU WANT TO FILE AN ANSWER TO THE LAWSUIT, GO TO THE NEXT PAGE.**

1. **Counting the Time to File Your Answer.** You have **5** days to file your Answer in court after you receive a copy of the lawsuit filed against you. The 5 days includes Saturdays and Sundays. Do not count the day you were given the

lawsuit, but begin counting with the next day. If the 5<sup>th</sup> day falls on a Saturday or Sunday, you can file your Answer on Monday.

2. **Where to get the Answer Forms.** You can get the Answer forms from the Self-Help Assistance & Referral Program site at 1931 Arlin Rhine Drive in Oroville, California or the courthouse where your case was filed.
3. **What does it Cost to File an Answer?** It costs \$94.00 for **each** person named as a **defendant** to file an Answer. 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.

**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.

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# **EVICTIONS**

**(UNLAWFUL DETAINERS)**

**2**

**Completing the Answer**

Judicial Council Form No. 982.1(95)

**HOW TO COMPLETE YOUR  
ANSWER FORM**

Complete the Answer 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. You can find the name and address of the court on the Complaint which was given to you. The example above shows the address for the Superior Court in Oroville. You must put the address of the court as it appears on the Complaint.
- c. Complete the rest of the caption box with the names of the **parties** (plaintiff and defendants, and the case number just as they appear on the Complaint).
  1. Identify Yourself. If there is more than one defendant listed in the **Complaint** each must respond, or a **default** may be entered against the defendants who do not file an Answer. Two defendants can share one Answer form, but each must sign the answer and pay a separate filing fee. If you are filing the Answer for yourself and another defendant named in the Complaint, put both of your names in line 1.

2. Responding to the Statements in the Complaint. Look at the second page of the Complaint where it states the amount of money the landlord is asking for. If the amount is \$1,000 or less you can check box (a).

If the landlord is asking for more than \$1,000 you need to check box (b) and answer each paragraph of the Complaint by any of the following:

A. Admitting the statements in the Complaint are true. If you do this, you do not need to mark anything other than the box next to the letter (b).

B. Denying the statements in the Complaint which are false. To do this, you need to put the number of the paragraphs in the Complaint which are false under the “(1)” section.

C. If you do not know whether a statement in the Complaint is true or false, you can put the paragraph number of that statement under the “(2)” section.

**If you have defenses to the eviction, go to the next section. If you have no defenses, skip to number 7.**

### **IF YOU HAVE DEFENSES TO THE CASE**

3. Stating Your Defenses. If you have defenses to the Complaint, you must state them in your Answer if you want the court to consider them at trial. Not all reasons for not paying rent are legally recognized defenses. Legal defenses stated in the Answer are called *affirmative defenses*.

Section 3 of the Answer form has a number of common affirmative defenses which apply to eviction cases. An explanation of the different affirmative defenses can be found in booklet (2a) entitled “*Legal Reasons Why I Should Not Be Evicted.*”

Mark the letters of the affirmative defenses which apply to your case, and then describe why you checked those defenses in section 3(j) on page 2 of the Answer form.

4. Other Defenses. **If you already moved out:** If you already moved out of the property, check box 4(a) and give the date you moved out.

**If the landlord failed to maintain the property:** If you checked box 3(a) of the affirmative defenses because the landlord did not maintain the property, and you believe the rent should be lowered, check box 4(b) and put the amount you think the rent should be reduced and why.

5. Telling the Court What you Want. If you checked box 3(a) of the affirmative defenses because the landlord failed to maintain the property, and you want the landlord to fix the problems, check 5(d). If you want the court to do something else in your case, state what you want in section 5(e).

6. Numbering the Pages. Only mark section 6 if you have attached extra pages to your Answer. Extra pages could be used to explain defenses if you do not have enough room in section 3(j). If you want, you can attach copies of documents, such as letters, notices or other writings which you want the court to consider in deciding your case.

## FOR ALL ANSWERS

7. Completing the Short Caption and Signing.

At the top of page 2 of the Answer form there is a small caption box like this:

Put the landlord's name where it says "Plaintiff (*Name*):" and put the name of the first defendant named in the Complaint where it says "Defendant (*Name*):". Put the case number in the box on the right side.

At the bottom of page 2 of the Answer form, in section 7, type or print your name on the left side, and sign your name on the right side.

Use the next set of lines to type or print the names and signatures of any other defendants who are answering with you. **REMEMBER** each defendant named in the Answer must pay a filing fee or separately qualify for a fee waiver.

The bottom lines below the "VERIFICATION" are left blank, unless you are being sued for more than \$1,000. If you are, then type or print your name on the left, and sign on the right again, just like you did above. When you sign here, you are **swearing under oath** that everything you put in the Answer is true.

**SUPERIOR COURT OF CALIFORNIA**

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# EVICTIONS

(UNLAWFUL DETAINERS)

## *Legal Reasons Why I Should Not Be Evicted*

### 2a

*Common Legal Reasons For Not Evicting a  
Tenant  
(Also called Affirmative Defenses)*

Although many tenants believe they have a moral defense for not paying the rent, such as losing a job or a spouse, the law only recognizes certain kinds of defenses in eviction cases. **Affirmative defenses** are defenses which the law recognizes which raise facts not stated in the Complaint. Affirmative defenses must be stated in the Answer in order to be considered at trial. The person who

states the defense has the burden of proving it at trial. The following are common defenses:

a. **Breach of the warranty to provide habitable premises.**

Every property rented for people to live in has to meet certain minimum health and safety standards. The standards for keeping a property safe and sanitary are called the **warranty of habitability**. You have the right to a secure property free of leaks, with working plumbing, safe gas and electricity, heat, hot and cold running water, clean and safe **common areas** (areas shared with others such as sidewalks and laundry rooms), and free of rats, mice, roaches or other bugs. If the health or safety problem was caused by normal wear and tear, and not by you or your guests, and if you told the landlord about the problem and he or she failed to make the repairs in a reasonable time, you may be able to withhold the rent money until the repairs are made. If you do withhold the rent, you should have the money when you come to trial.

(For researching the law for this defense you can find it at Code of Civil Procedure (CCP) section 1174.2 and Civil Code (CC) sections 1941-1942.5; *Green v Superior Court* (1974) 10 Cal.3d 616, 631-632, 111 Cal.Rptr. 704)\*

*\*All references to code sections or cases can be found in the law library.*

b. **Deducting Needed Repairs from the Rent.**

If the landlord does not maintain the property, and you need to make repairs yourself, you must first give your landlord written notice of the things to be fixed, and your intent to fix them and subtract the costs from your next month's rent if the repairs are not made in a reasonable time. You must allow your landlord a "reasonable" time to make the repairs before you do them yourself and deduct the cost. A "reasonable" time is usually considered 30 to 60 days, unless the problem creates an emergency situation in which health or safety are put at risk if not repaired immediately.

(If you want to research the law for this defense you can find it at Civil Code (CC) section 1942.)

**c. Landlord's Refusal to Accept the Rent.**

If your landlord gave you a 3-Day Notice to Pay or Quit, and you tried to pay your landlord the full amount of rent due before the end of the three (3) days but the landlord refused to accept it, you can check box "c" and state the date when you tried to pay the rent. You should have the rent money with you at the trial.

**d. Landlord Waives or Cancels the Notice to Quit.**

If your landlord tells you to ignore the notice to quit, or accepts rent from you after giving you the 3-day notice to quit, this defense may apply. If the landlord gave you a 30 day notice to quit, and later accepted rent to cover a period of time after the 30 days, this defense may also apply. If you use this defense, save the rent money in a separate bank account and leave it there until your trial. Having the rent money will help show the judge your good faith, and will help you to settle the case, or make it easier if you have to move.

(If you want to research the law for this defense, you can read the case of *EDC Assoc. v Gutierrez* (1984) 153 Cal.App.3d 167, 170, 200 Cal.Rptr. 333.)

**e. Retaliatory Eviction.**

If you think the landlord is evicting you to get even because you exercised your legal rights, this defense may apply. An example might be a landlord evicting a tenant for reporting the landlord to the building and safety department for code violations.

(If you want to research the law for this defense, look at Civil Code section 1942.5(c) and the case of *Barela v Superior Court* (1981) 30 Cal.3d 244, 249, 178 Cal.Rptr. 618.)

**f. Discrimination**

If the landlord is evicting you for reasons which are not related to how good a tenant you are, you may have a defense based on discrimination, such as race, color, sex, religion, national origin, marital status, etc. A landlord cannot evict or

refuse to rent to a tenant based on discrimination. Besides being a defense to an eviction, housing discrimination is against the law, and the landlord can be sued for damages in a separate case.

(If you want to research the law for this defense look at Civil Code section 51, et seq.; *Abstract Investment Co. v Hutchinson* 1962) 204 Cal.App.2d 242, 255, 22 Cal.Rptr. 309; *Marina Point, Ltd. v Wolfson* (1982) 30 Cal.3d 721, 724-726, 180 Cal.Rptr. 496.)

### **g. Rent Control**

This defense only applies in those areas where local rent control laws are still enforced, such as certain mobile home parks and federal housing projects.

### **h. Acceptance of Rent After Expiration of Notice**

This defense might apply if the landlord has accepted rent from you after the 3 or 30 day notice given to you by the landlord has expired.

### **i. Other Defenses**

If you have any other defenses which are not listed on the answer form, you can check box “(I)” and state your defenses in section 3(j) at the top of page 2 of the form. Some other defenses which might apply are the following:

#### **1. Material Breach of Rental Agreement by Landlord.**

The landlord violated the rental agreement in a **material** way. This means that the landlord failed to do something important required by the rental agreement. (For the law on this defense, read the case of *Green v Superior Court* (1974) 10 Cal.3d 616, 634-635, 111 Cal.Rptr. 704).

#### **2. Defective Notice.**

If the landlord gave you defective notice of the eviction, either because it was not in writing, or was not given to you in the way the law requires, or because the 3 day notice did not state the exact amount of rent due or the place to pay the rent, this defense might apply.

### **3. Ownership of the Property is in Dispute.**

If the eviction lawsuit is brought by a lender who loaned money to a homeowner, and not between a landlord and tenant; and an issue in the lawsuit affects rights to ownership of the property, this defense might apply.

(For the law on this defense, read the case of *Mehr v Superior Court* (1983) 139 Cal.App.3d 1044, 1049, 189 Cal.Rptr. 138.)

### **4. Subdivision Map Act.**

If the landlord violated the **Subdivision Map Act** by renting the property, this defense might apply. (For the law on this defense look at Government Code sections 66410-66499.57 and read the case of *Adler v Elphick* (1986) 184 Cal.App.3d 642, 645-646, 229 Cal.Rptr. 554.)

### **5. Offset.**

If you previously overpaid the rent and are entitled to a refund, you may claim a defense called a **set-off** or **offset**, which means you can ask that you receive a credit on your rent for the amount of money the landlord is supposed to refund to you for earlier overpayment of rent. (For the law on this defense read the case *Minelian v Manzella* (1989) 215 Cal.App.3d 457, 463-465, 263 Cal.Rptr. 597.)

### **j. Facts Supporting Affirmative Defenses.**

This section is found at the top of page two of your answer form. Here you have to explain why you marked the affirmative defenses you chose, and give the facts which support each of your defenses.

If you need more room, you can check the box at 3j(2) and add extra pages, OR you can include the entire facts on a separate page and mark box 3j(1). If you add pages, remember to mark under section 6 of the pages you are adding.

## **WARNING**

THERE MAY BE OTHER AFFIRMATIVE DEFENSES WHICH THE LAW RECOGNIZES, BUT WHICH ARE NOT LISTED HERE. AN ATTORNEY CAN BEST INFORM YOU WHICH AFFIRMATIVE DEFENSES ARE APPROPRIATE FOR YOU TO RAISE BASED ON THE FACTS OF YOUR CASE. YOU ARE STRONGLY URGED TO TALK WITH A PRIVATE ATTORNEY, IF POSSIBLE, TO EVALUATE THE FACTS OF YOUR CASE AND ADVISE YOU WHICH AFFIRMATIVE DEFENSES YOU SHOULD INCLUDE BEFORE FILING YOUR ANSWER.

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# EVICTIONS

## (UNLAWFUL DETAINERS)

### 3

#### Completing the Certificate of Service by Mail

#### SERVING THE ANSWER AND COMPLETING THE PROOF OF SERVICE BY MAIL

Before you can file your Answer with the court, you first have to make sure that a copy is **served** on the other side. This means that a copy of the Answer with the **Proof of Service** has to be given to the attorney for the landlord, or the landlord if not represented by an attorney. It can be **served** by mail or hand delivered, but only by a person who is not a **plaintiff** or **defendant** in the case.

The last page of your Answer packet is a **Proof of Service by Mail**. This form is used to show the court that a copy of your Answer was sent to the other side before you file the original. It does not have to be received by the other side before you file, only put in the mail. The **Proof of Service by Mail** must be signed by a

person over 18 who is **not** a party to the case. This means that neither you, nor any other defendant in the case, can sign the Proof of Service. A completed sample form is found at the back of this booklet.

THE COURT WILL NOT ACCEPT AN ANSWER FOR FILING WITHOUT A SIGNED PROOF OF SERVICE ATTACHED TO THE ANSWER.

## **Completing the Proof of Service By Mail**

To complete the Proof of Service by Mail first fill in the caption box at the top of the form just as you completed the caption on your answer form.

1. Section 1, print or type “ANSWER - Unlawful Detainer”
2. A copy of the Answer and Proof of Service should be mailed to the name and address which appear in the middle portion of the **Summons**, just below the name and address of the court. The **Summons** is the coversheet that you were given when you were served with the **Complaint**. If the landlord’s name and address are shown on the **Summons**, the Answer must be mailed to the landlord. If the landlord’s attorney’s name and address are shown on the **Summons**, the Answer must be sent to the attorney.

Section 2(a), print or type the landlords name or the attorney for the landlord if the landlord is represented by an attorney.

Section 2(b), print or type the landlord's address or the landlord's attorney's address.

Section 2(c), print or type the date of mailing.

Section 2(d), print or type the city and state where the Answer was mailed from.

3. Section 3, print or type the address of the non party who mails the Answer. Additionally, print or type the telephone number of the non party who mails the Answer.

Date: The non party types or prints the date the Proof of Service is signed.

Following the Date, the non party types or prints his/her name and then signs the document on the right.

**MAKE SURE A COPY OF THE ANSWER AND PROOF OF SERVICE ARE MAILED, NOT THE ORIGINAL.** You need to file your original Answer at the Court Clerk's office together with the original Proof of Service. You should have an extra copy with you when you file the original so the clerk can stamp the copy and give it back to you. You should always keep of copy of each document you **file**.

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**EVICTIONS**

# (UNLAWFUL DETAINERS)

## 4

### Filing the Answer

#### FILING YOUR ANSWER

1. You need to file your original **Answer** and **Proof of Service by Mail** at the court clerk's office. You should first make an extra copy of each page so the clerk can stamp the copy and give it back to you for your records.
2. When you go to the Court where the Complaint was filed to file your documents, go to the Clerk designated to accept "CIVIL" documents. You will need to pay a 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 Answer. For instructions on how to complete the fee waiver application see the packet called "*Waiver of Court Fees*".
3. Remember that each defendant named in the Answer must pay a filing fee or file a separate Application for Waiver of Court Fees and Costs.

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**EVICTIONS**

**(UNLAWFUL DETAINERS)**

# 5

## Preparing for Trial

### Preparing Your Case For Trial

#### 1. Determining the Trial Date.

Eviction cases are given priority on the court calendar. This means they are scheduled for trial much faster than other types of civil cases. 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 Answer, you should call the court. **BEFORE YOU MAKE THIS CALL, LOOK AT THE COPY OF THE COMPLAINT OR ANSWER 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 Landlord Has Against You.

Usually you know what the landlord is claiming because you can read it in the Complaint, and you know how to prepare your defense to what you are accused of having done or not done. Sometimes you may not know the basis of the eviction case, and you need to find out before the trial so you can prepare your defense. 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 you present to the court must have been stated in your **Answer**. You have the **burden of proof** for each **affirmative defense** you put in your Answer. This means that you must convince the court that the evidence in the case supports your defense more than it supports the landlord's side.

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