



SUPERIOR COURT OF CALIFORNIA

**COUNTY OF TULARE**

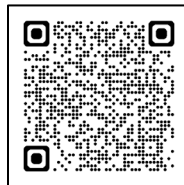
[www.tulare.courts.ca.gov](http://www.tulare.courts.ca.gov) • (559) 730-5000

## UNLAWFUL DETAINER (EVICTION): ANSWER

Forms included in this packet:		
<b>COMPLETE, FILE, &amp; SERVE</b>	UD-105	Answer – Unlawful Detainer
	Attachment 3(t)	Affirmative Defenses Attachment ( <i>optional</i> )
	CP 10.5	Prejudgment Claim of Right to Possession ( <i>optional</i> )
<b>FILE AFTER SERVICE</b>	POS-030	Proof of Service by First-Class Mail – Civil

For a list of legal packets and samples, scan the QR code below, or visit:

<https://www.tulare.courts.ca.gov/forms-filing/local-forms-information-filing-instructions>



# Unlawful Detainer (Eviction): Answer

## **Completing Forms:**

- California Court forms: Fillable, printable PDF versions of the forms referenced in this packet are available at the California Court website. For details, visit: <https://courts.ca.gov/rules-forms/find-your-court-forms>
- LawHelp Interactive: A free resource that assists litigants with completing legal forms through a series of guided interview questions. For details, visit: <https://lawhelpinteractive.org/Interview/GenerateInterview/6958/engine>
- Legal packets and samples: The Tulare County Superior Court's website offers many packets and samples. Visit the link on page 1 (or scan the QR code).

## **Self-Help Resource Center:**

If you do not have an attorney representing you, free procedural assistance is available. Contact the Self-Help Resource Center (SHRC), also known as the Office of the Family Law Facilitator. SHRC staff will provide instructions on how to complete forms, how to serve the other party, and can answer procedural questions. However, SHRC staff **CANNOT** complete your forms for you, provide legal advice, or represent you in court. The SHRC can be reached at (559) 737-5500 and [selfhelp@tulare.courts.ca.gov](mailto:selfhelp@tulare.courts.ca.gov), and offices are located at:

County Civic Center

221 S. Mooney Blvd., Room 203  
Visalia, CA 93291

South County Justice Center

300 E. Olive Ave.  
Porterville, CA 93257

## **Other Resources:**

If you have further questions or concerns, consult with an attorney or use the assistance of a paralegal or typing service. You may also conduct research on your legal issue and find additional information at:

- California Courts' Self-Help website: <https://selfhelp.courts.ca.gov/>
- Tulare County Law Library: <https://tularecounty.ca.gov/lawlibrary/>
- Sacramento County Public Law Library: <https://saclaw.org/>
- Central California Legal Services (CCLS): <https://centralcallegal.org/>
  - CCLS provides free legal assistance on landlord-tenant matters for parties who meet certain financial criteria.
- California Rural Legal Assistance (CRLA): <https://crla.org/>
  - CRLA is a nonprofit law firm that provides free civil legal services to low-income residents of California's rural counties.
- Office of The Attorney General: <https://oag.ca.gov/tenants>

# INSTRUCTIONS

In California, a landlord can evict a tenant in certain situations through a process called *unlawful detainer*. If you've been served with a **Summons** and **Complaint** for unlawful detainer, this means your landlord has started an eviction case asking a judge to order you to move out – to evict you. You should have already received a written **Notice** that provides the reason the landlord is evicting you, and the deadline to comply with the *Notice* has passed. Carefully read these documents to understand the allegations against you, and what the landlord is requesting (see *Item 20 of the Complaint*).

This informational guide provides information and forms to respond to the **Complaint**, and includes an eviction flow chart which shows the various steps in an eviction case. Read this packet in its entirety before you begin completing forms. Forms referenced but not included in this packet are available on the California Court website, and resource links are listed on page 2.

**Act quickly:** You have 10 court days to file an **Answer** after you're been personally served with the **Summons** and **Complaint**. It is not enough to call or write a letter to the landlord, or to write a letter to the court. When counting the 10 days, don't count weekends or court holidays. Day 1 is the day after you were served.

Extended Deadline: If you were served by substituted service (*documents left with an adult at your home or work, and then mailed to you*), you have 20 days to respond (*the first 10 days are calendar days, and the next 10 days are court days*).

## STEP 1: DETERMINE HOW TO RESPOND

You have four main choices:

- Respond to the eviction case by filing an **Answer** with the court. This means you intend to participate in the lawsuit and fight the eviction. Go to *Step 2* for next steps.
- Negotiate with your landlord and try to come up with an agreement where you can stay in your home. This agreement, called a *Stipulation*, must be filed with the court, and can say that the case is being dismissed provided that you fulfill your duties under the agreement.
- Move out. Later, your landlord can still sue you for back rent.
- Do nothing. The landlord can evict you without your having a say in the case. An eviction will show up on your credit report and can hurt your ability to rent in the future. If you owe money for back rent, the landlord may be able to take that money from your paycheck or bank account.

**Tip:** Even if you choose to negotiate with your landlord or move out immediately, **it may be a good idea to file an Answer**, so the case isn't decided without your having a say.

## STEP 2: COMPLETE THE FORMS

### **UD-105, Answer – Unlawful Detainer**

If you've decided to respond, complete this form. One **Answer** form can be filed for multiple tenants if they all have the same defense. Otherwise, each tenant should file their own **Answer**.

- **Caption:** Enter the *Plaintiff*, *Defendant*, and *Case Number* exactly as they are written on the **Complaint**.
- **Item 1:** Write your name, and the name of each person filing the **Answer** with you.
- **Item 2:** Mark either (a) for general denial or (b) for specific denials.
  - If you marked (b), complete (1) and (2) and explain why you disagree with certain statements or claims in the **Complaint**.
- **Item 3:** Mark the boxes if any of the listed defenses or objections apply to you.
  - If you marked any of the boxes from 3(a) through 3(s), explain at 3(t) why you think those defenses or objections apply to your situation.
  - Optional: Included in this packet is **Attachment 3(t)**, which lists various affirmative defenses.
- **Items 4 through 6:** Complete these items if they apply to you.
- **Item 7:** Mark the box for “*Did not*”.
  - Each tenant using this form must print their name and sign.
- **Under Verification:** Each tenant using this form must date, print their name, and sign, indicating that everything entered in the **Answer** is true.

### **CP 10.5 – Prejudgment Claim of Right to Possession**

This *optional* form is only used by occupants who were not named in the **Complaint**, but who assert they have a legal right to remain in the property. Carefully read the **Notice** at the top of *page 1*. Filing and serving this form will allow you to become part of the case but *could leave you open to liability in the event the judge rules in favor of the landlord*. This means that if you lose, the eviction will show up on your credit record.

- File form **CP 10.5** within 10 calendar days of being served the **Summons** and **Complaint**.
- You must also file form **UD-105, Answer – Unlawful Detainer**, within 5 calendar days of filing form **CP 10.5**.

## STEP 3: FILE YOUR FORMS

After you've completed your forms, make two copies. Bring the originals and copies to the Clerk of Court, located at Room 201 of the Visalia Courthouse, or the filing windows at the South County Justice Center in Porterville. The Clerk will keep the originals and give you back copies. One copy is for you, and other copy is to serve on the landlord.

**Filing Fee:** There is a fee for filing these forms. If you cannot pay the filing fee, ask the Clerk of Court for a Fee Waiver Packet, which includes:

- **FW-001, Request to Waive Court Fees**, and
- **FW-003, Order on Court Fee Waiver (Superior Court)**.

Complete these forms, make one copy of each for your records, and present them at the time of filing. Each tenant must complete their own fee waiver forms.

## STEP 4: SERVE THE LANDLORD

The next step is to serve the landlord or landlord's attorney with a copy of your **Answer**. *Service* means someone age 18 or older, who is not a party to the case, will mail a copy of your filed form **UD-105, Answer – Unlawful Detainer**, to the landlord or landlord's attorney, at the name and address listed on *Item 2* of form **SUM-130, Summons– Eviction**.

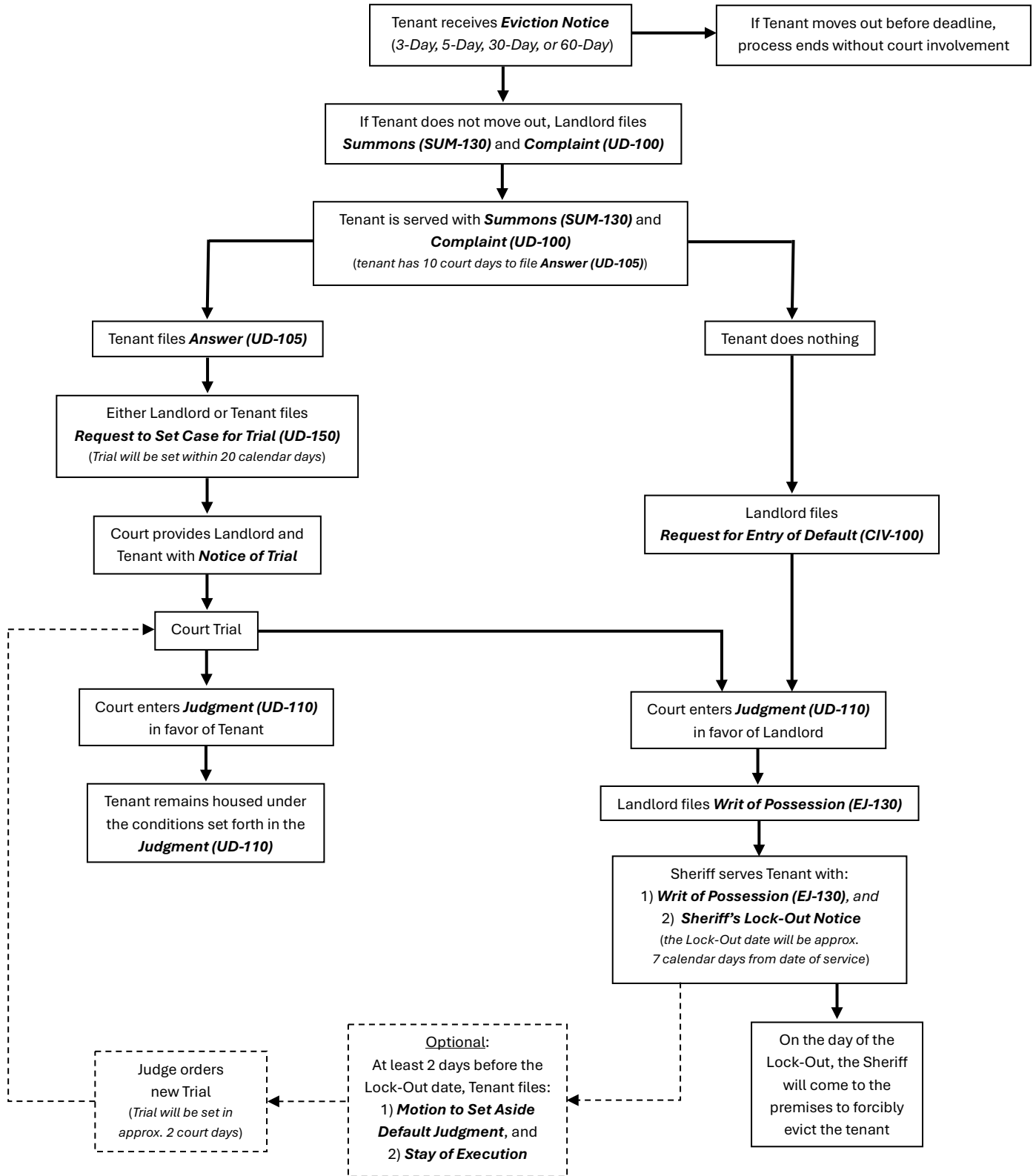
## STEP 5: FILE THE PROOF OF SERVICE

After service, the server must complete form **POS-030, Proof of Service by First-Class Mail – Civil**, stating what documents were served, and when and where the service took place. The server will date, print, and sign at the bottom of *page 2*. Make one copy and bring to the Clerk of Court for filing. The Clerk will keep the original and give you back a filed copy for your records. A filed **Proof of Service** tells the court that the landlord received the forms and that the case cannot proceed to default.

## STEP 6: REQUEST TRIAL

After you file and serve your **Answer**, both the landlord and tenant can request a trial. To do so, complete form **UD-150, Request to Set Case for Trial – Unlawful Detainer**. Make a copy and have someone age 18 or older mail it to the landlord. Have your server fill out the **Proof of Service** section on *page 2*, and then bring to the Clerk of Court for filing. After filing, the Court Clerk will mail all parties a notice with the trial date. The trial date will be set within 20 calendar days.

# The Eviction Process



ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	<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 (all defendants for whom this answer is filed must be named and must sign this answer unless their attorney signs):

answers the complaint as follows:

2. DENIALS (Check ONLY ONE of the next two boxes.)

- a.  **General Denial** (Do not check this box if the complaint demands more than \$1,000.)  
Defendant generally denies each statement of the complaint.
- b.  **Specific Denials** (Check this box and complete (1) and (2) below if complaint demands more than \$1,000.)  
Defendant admits that all the statements of the complaint are true EXCEPT:

**Denial of Allegations in Complaint (form UD-100 or other complaint for unlawful detainer)**

(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 form 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 form MC-025, titled as Attachment 2b(2).

3. DEFENSES AND OBJECTIONS (NOTE: For each box checked, you must state brief facts to support it in item 3t (on page 3) or, if more room is needed, on form MC-025. You can learn more about defenses and objections at selfhelp.courts.ca.gov/eviction-tenant.)

- 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.  (Nonpayment of rent only) Plaintiff's demand for possession is based on nonpayment of rent due more than one year ago.
- e.  Plaintiff waived, changed, or canceled the notice to quit.
- f.  Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.



PLAINTIFF: DEFENDANT:	CASE NUMBER:
--------------------------	--------------

3. g.  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.
- h.  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 3t the facts showing violation of the ordinance.)
- i.  Plaintiff's demand for possession is subject to the Tenant Protection Act of 2019, 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 3t 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 Civil Code section 1946.2(c).
- (3)  Plaintiff failed to comply with the relocation assistance requirements of Civil Code section 1946.2(d).
- (4)  Plaintiff has raised the rent more than the amount allowed under Civil Code section 1947.12, and the only unpaid rent is the unauthorized amount.
- (5)  Plaintiff violated the Tenant Protection Act in another manner that defeats the complaint.
- j.  Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- k.  Plaintiff seeks to evict defendant based on an act—against defendant, defendant's immediate family member, or a member of defendant's household—that constitutes domestic violence, sexual assault, stalking, human trafficking, abuse of an elder or a dependent adult, or a crime that caused bodily injury, involved a deadly weapon, or used force or threat of force. (*This defense requires one of the following, which may be included with this form: (1) a temporary restraining order, protective order, or police report that is not more than 180 days old; (2) a signed statement from a qualified third party (e.g., a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, psychologist, or a victim of violent crime advocate concerning the injuries or abuse resulting from these acts); or (3) another form of documentation or evidence that verifies that the abuse or violence occurred.*)
- (1)  The abuse or violence was committed by a person who does not live in the dwelling unit.
- (2)  The abuse or violence was committed by a person who lives in the dwelling unit and defendant claims protection from eviction under Code of Civil Procedure section 1161.3(d)(2).
- l.  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.
- m.  Plaintiff's demand for possession of a residential property is based on nonpayment of rent or other financial obligations and (*check all that apply*)
- (1)  plaintiff received or has a pending application for rental assistance from a governmental rental assistance program or some other source relating to the amount claimed in the notice to pay rent or quit. (Health & Saf. Code, §§ 50897.1(d)(2)(B) and 50897.3(e)(2).)
- (2)  plaintiff received or has a pending application for rental assistance from a governmental rental assistance program or some other source for rent accruing since the notice to pay rent or quit. (Health & Saf. Code, §§ 50897.1(d)(2)(B) and 50897.3(e)(2).)
- (3)  plaintiff's demand for possession is based only on late fees for defendant's failure to provide landlord payment within 15 days of receiving governmental rental assistance. (Health & Saf. Code, § 50897.1(e)(2)(B).)
- n.  Plaintiff violated a local COVID-19–related ordinance regarding evictions (*briefly state facts describing this in item 3t*).
- o.  The property is covered by the federal CARES Act and the plaintiff did not provide 30 days' notice to vacate. (*Property covered by the CARES Act means property where the landlord*
- *is participating in a covered housing program as defined by the Violence Against Women Act (34 U.S.C. § 12491(a));*
  - *is participating in the rural housing voucher program under section 542 of the Housing Act of 1949 (34 U.S.C. § 12491); or*
  - *has a federally backed mortgage loan or a federally backed multifamily mortgage loan.*
- p.  Before October 1, 2025, plaintiff improperly applied payments made by defendant in a tenancy that was in existence between March 1, 2020, and September 30, 2021 (Code Civ. Proc., § 1179.04.5), as follows (*check all that apply*):
- (1)  Plaintiff applied a security deposit to rent, or other financial obligations due, without tenant's written agreement.
- (2)  Plaintiff applied a monthly rental payment to rent or other financial obligations that were due between March 1, 2020, and September 30, 2021, other than to the prospective month's rent, without tenant's written agreement.



PLAINTIFF: DEFENDANT:	CASE NUMBER:
--------------------------	--------------

3. q.  Plaintiff refused to accept payment from a third party for rent due. (Civ. Code, § 1947.3; Gov. Code, § 12955.)
- r.  Defendant has a disability and plaintiff refused to provide a reasonable accommodation that was requested. (Cal. Code Regs., tit. 2, § 12176(c).)
- s.  Other defenses and objections are stated in item 3t.
- t. (Provide facts for each item checked above, either below or, if more room needed, on form MC-025):  
 Description of facts or defenses are on form MC-025, titled as Attachment 3t.

#### 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):  
 Explanation is on form MC-025, titled as Attachment 4b.
- c.  Other (specify below or, if more room needed, on form MC-025):  
 Other statements are on form 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 form MC-025, titled as Attachment 5e.

6.  Pages attached (specify number of pages):

PLAINTIFF: DEFENDANT:	CASE NUMBER:
--------------------------	--------------

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

**Attachment 3(t) - AFFIRMATIVE DEFENSES**

Check all boxes that apply to your case

 **Plaintiff has breached the warranty to provide habitable premises**

The property has the following defective conditions:

- leaks (*describe where*) \_\_\_\_\_
- defective plumbing (*describe where and how*) \_\_\_\_\_
- unsafe gas or electricity (*describe where and how*) \_\_\_\_\_
- no heat
- no hot and cold running water
- dirty or unsafe **common areas** (areas shared with others such as sidewalks and laundry rooms)
- infestation of rodents, pests, or other vermin.

These conditions above were caused by normal wear and tear, and not by me or my guests. I told the landlord about the problem on or about (*describe when and how*) \_\_\_\_\_ but s/he failed to make the repairs in a reasonable time. I told the landlord I would withhold the rent money until the repairs are made. I have the rent money and will bring it to court with me.

[See 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]

 **Deducting Needed Repairs from the Rent**

The landlord failed to maintain the property and I had to make the following repairs myself: (*describe the type of repairs*) \_\_\_\_\_. I first told the landlord about the problem on or about (*describe when and how*) \_\_\_\_\_ but s/he failed to make the repairs in a reasonable time. I then told my landlord that I would fix the problems myself and subtract the costs from the rent. The repairs cost less than one month's rent, and I have not done this more than twice in a 12-month period. [See Civil Code (CC) § 1942]

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

I tried to pay the landlord the full amount of rent due on \_\_\_\_\_, which was before the end of the three days in the notice to pay rent or quit, but the landlord refused to accept it. I have the rent money and will bring it to the trial.

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

The landlord told me on or about (*describe when and how*) \_\_\_\_\_ to ignore the 3-day notice to pay or quit, and that it was O.K. if I paid the rent by \_\_\_\_\_.

The landlord accepted rent to cover a period of time after the  30  60 day notice to quit.

The landlord accepted partial rent after the 3-day notice to quit, and before this lawsuit was filed.

I have the rent money and will bring it to the trial. [See *EDC Assoc. v. Gutierrez*, (1984) 153 Cal.App.3d 167, 170, 200 Cal.Rptr. 333]

 **Retaliatory Eviction**

The landlord is evicting me because I reported the landlord to (*describe to whom*) \_\_\_\_\_ on or about (*date*) \_\_\_\_\_ because (*describe reason*) \_\_\_\_\_. \_\_\_\_\_ and the landlord is retaliating against me for making my complaint. [See *Barela v. Superior Court*, (1981) 30 Cal.3d 244, 249, 178 Cal.Rptr. 618]

 **Discrimination**

The landlord is evicting me, not because of being a bad tenant, but because of my  race  color  sex  religion  national origin  marital status  sexual orientation  number of children  occupation  physical or mental disability  because I am receiving public assistance. [See Civil Code Section 51, et seq.; *Abstract Investment Co. V. Huthchinson* (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]

Case Name: \_\_\_\_\_

Case # : \_\_\_\_\_

**Rent Control**

The property that I am renting is  governed by a rent control ordinance of \_\_\_\_\_ or  it is a mobile home park subject to rent control, or  it is a federally subsidized housing project, or  it is Section 8 housing, AND the landlord's efforts to evict me violate rent control law.

**Tenant Protection Act of 2019** [See Civil Code (CC) §§ 1946.2, 1947.12]

- The notice of termination does not state a just cause for the termination.
- The landlord did not provide me an opportunity to cure alleged violations of the terms and conditions of the lease (other than nonpayment of rent)
- The landlord  did not offer relocation assistance within 15 days of giving notice  did not offer relocation assistance
- The landlord raised the rent more than is allowed [See Civil Code (CC) § 1947.12]. The original rent was \$ \_\_\_\_\_. The landlord raised the rent to \$ \_\_\_\_\_. The only unpaid rent is the unauthorized amount.
- The landlord violated the Tenant Protection Act in some other way that defeats the complaint, as follows:  
\_\_\_\_\_  
\_\_\_\_\_

**Acceptance of Rent:**

The landlord accepted rent after the period of the notice to pay rent or quit expired. The landlord accepted the rent on (date): \_\_\_\_\_. [See Civil Code (CC) §§ 1946.2, 1947.12]

**Domestic Violence/Sexual Assault/Stalking/Human Trafficking/Elder Abuse:**

- The tenant or a member of the tenant's family is the victim of Domestic Violence/Sexual Assault/Stalking/Human Trafficking/Elder Abuse and the victim has a restraining order or police report not more than 180 days old, or a signed statement from a third party concerning the acts, and the landlord is evicting the tenant based on that act.
- The date of the police report or restraining order is: \_\_\_\_\_.
- The circumstances of the incident are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Emergency Assistance:**

- The landlord is evicting the tenant because the tenant or someone else called the police or emergency services on behalf of a victim of abuse, crime, or an emergency and the tenant or the person calling believed it was necessary.
- The circumstances of the incident are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Retaliation for Nonpayment During Protected Period**

The landlord is claiming to evict based on a stated reason that is not the real reason; the landlord is actually evicting because the tenant did not pay rent during the protected period between March 1, 2020 and August 30, 2020. The reason I believe this to be true is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Failure to State a Cause of Action**

The landlord has failed to include all the requirements for properly alleging a complaint for unlawful detainer.

**Material Breach of Rental Agreement by Landlord**

The landlord materially violated the rental agreement by (describe what the landlord failed to do) \_\_\_\_\_. [See *Green v. Superior Court*, (1974) 10 Cal.3d 616, 634-635, 111 Cal.Rptr. 704]

**Defective Notice**

The notice that the landlord gave me was defective because it:

- was not in writing
- was not given to me in the way the law requires

Case Name: \_\_\_\_\_

Case # : \_\_\_\_\_

- the 15 day notice to pay rent or quit did not state the exact amount of rent due, or included other charges besides rent.

[See Code of Civil Procedure section 1161]

**Defective Notice of Rental Increase**

The landlord raised the rent more than 10% and failed to give me 60 days advance notice of the increase, and based the 3-day notice to pay rent or quit on the improperly noticed rental increase.

[See California Civil Code section 827]

**Ownership of the Property is in Dispute**

This eviction lawsuit is brought by a lender who loaned money to a homeowner, and by a landlord who rented property to a tenant; and the foreclosure that resulted in the lender acquiring title to the property was conducted improperly or in violation of the law. Because title and right to ownership of the property an issue in the lawsuit it should not be decided in an unlawful detainer case.

(See *Mehr v. Superior Court* (1983) 139 Cal.App.3d 1044, 1049, 189 Cal.Rptr. 138]

**Subdivision Map Act**

The landlord violated the Subdivision Map Act by renting the property because the property was not zoned for this type of use or occupancy. Therefore the rental agreement is not enforceable.

(See 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]

**Offset**

I overpaid the rent for the month of \_\_\_\_\_, year \_\_\_\_\_ and am entitled to a refund in the amount of \$ \_\_\_\_\_; or I paid the sum of \$ \_\_\_\_\_ to \_\_\_\_\_ at the specific request of the landlord, but the landlord failed to credit me this amount on my rent, or refund the overpayment to me.

[See *Minelian v. Manzella* (1989) 215 Cal.App.3d 457, 463-465, 263 Cal.Rptr. 597]

**Act of God**

I was prevented from performing the terms of the rental agreement due to a natural occurrence (earthquake, flood, storm) which occurred on \_\_\_\_\_, and made it impossible for me to *(describe)* \_\_\_\_\_.

**Lack of Privity**

There was no contract or agreement between the landlord and I so I cannot be held responsible for any rent.

**Statute of Frauds**

The lease the landlord is suing me for was not in writing so it cannot be enforced against me.

**Parole Evidence Rule**

The terms of the rental agreement or lease that the landlord claims I violated were not included in the written contract.

**Failure of Condition Precedent**

The landlord failed to do the following \_\_\_\_\_.

This was required by the terms of our agreement before I had the obligation to pay \$ \_\_\_\_\_ for \_\_\_\_\_.

**Breach by Plaintiff**

The landlord broke the contract first by *(describe)* \_\_\_\_\_, and this excused me from performing my part of the bargain.

**Attorney's Fees Not Recoverable**

There was no contract I entered into with the landlord that included a clause entitling the prevailing party to recover attorneys' fees.

---

**Affirmative Defenses Attachment**

Case Name: \_\_\_\_\_

Case # : \_\_\_\_\_

**OTHER DEFENSES**

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**NOTICE: EVERYONE WHO LIVES IN THIS RENTAL UNIT MAY BE EVICTED BY COURT ORDER. READ THIS FORM IF YOU LIVE HERE AND IF YOUR NAME IS NOT ON THE ATTACHED SUMMONS AND COMPLAINT.**

1. If you live here and you do not complete and submit this form, you may be evicted without further hearing by the court along with the persons named in the Summons and Complaint.
2. You must file this form within 10 days of the date of service listed in the box on the right hand side of this form.
  - **Exception:** If you are a tenant being evicted after your landlord lost the property to foreclosure, the 10-day deadline does not apply to you and you may file this form at any time before judgment is entered.
3. If you file this form, your claim will be determined in the eviction action against the persons named in the complaint.
4. If you do not file this form, you may be evicted without further hearing.
5. If you are a tenant being evicted due to foreclosure, you have additional rights and should seek legal advice immediately.

CLAIMANT OR CLAIMANT'S ATTORNEY ( <i>Name and Address</i> ):	TELEPHONE NO.:	<b>FOR COURT USE ONLY</b>
ATTORNEY FOR ( <i>Name</i> ):		
<b>NAME OF COURT:</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
Plaintiff:		CASE NUMBER:
Defendant:		
<b>PREJUDGMENT CLAIM OF RIGHT TO POSSESSION</b>		
<b>Complete this form only if ALL of these statements are true:</b> <b>1. You are NOT named in the accompanying Summons and Complaint.</b> <b>2. You occupied the subject premises on or before the date the unlawful detainer (eviction) complaint was filed. (The date is in the accompanying Summons and Complaint.)</b> <b>3. You still occupy the subject premises.</b>		<i>(To be completed by the process server)</i> DATE OF SERVICE: <i>(Date that form is served or delivered, posted, and mailed by the officer or process server)</i>

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (*specify*):
2. I reside at (*street address, unit no., city and ZIP code*):
3. The address of "the premises" subject to this claim is (*address*):
4. On (*insert date*): \_\_\_\_\_, the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (*This date is in the accompanying Summons and Complaint.*)
5. I occupied the premises on the date the complaint was filed (*the date in item 4*). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (*the date in item 4*).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (*the date in item 4*).
8. I was not named in the Summons and Complaint.
9. I understand that if I make this claim of possession, I will be added as a defendant to the unlawful detainer (eviction) action.
10. (*Filing fee*) I understand that I must go to the court and pay a filing fee of \$ \_\_\_\_\_ or file with the court an "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file the form for waiver of court fees, I will not be entitled to make a claim of right to possession.

(Continued on reverse)

Plaintiff:  Defendant:	CASE NUMBER:
------------------------------	--------------

- 11. If my landlord lost this property to foreclosure, I understand that I can file this form at any time before judgment is entered, and that I have additional rights and should seek legal advice.
- 12. I understand that I will have *five days* (excluding court holidays) to file a response to the Summons and Complaint after I file this Prejudgment Claim of Right to Possession form.

**NOTICE: If you fail to file this claim, you will be evicted without further hearing.**

13. **Rental agreement.** I have (*check all that apply to you*):
- a.  an oral or written rental agreement with the landlord.
  - b.  an oral or written rental agreement with a person other than the landlord.
  - c.  an oral or written rental agreement with the former owner who lost the property to foreclosure.
  - d.  other (*explain*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

**WARNING:** Perjury is a felony punishable by imprisonment in the state prison.

Date:

\_\_\_\_\_ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF CLAIMANT)

**NOTICE:** If you file this claim to possession, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

**- NOTICE TO OCCUPANTS -**

**YOU MUST ACT AT ONCE if all the following are true:**

- 1. You are NOT named in the accompanying Summons and Complaint.**
- 2. You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed.**
- 3. You still occupy the premises.**

You can complete and SUBMIT THIS CLAIM FORM WITHIN 10 DAYS from the date of service (on the form) at the court where the unlawful detainer (eviction) complaint was filed. If you are a tenant and your landlord lost the property you occupy through foreclosure, this 10-day deadline does not apply to you. You may file this form at any time before judgment is entered. You should seek legal advice immediately.

If you do not complete and submit this form (and pay a filing fee or file a fee waiver form if you cannot pay the fee), YOU WILL BE EVICTED.

After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to occupy the premises will be decided by the court. *If you do not file this claim, you may be evicted without a hearing.*

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>    TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF:  RESPONDENT/DEFENDANT:	
<b>PROOF OF SERVICE BY FIRST-CLASS MAIL - CIVIL</b>	CASE NUMBER: _____

***(Do not use this Proof of Service to show service of a Summons and Complaint.)***

1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:

3. On *(date):* \_\_\_\_\_ I mailed from *(city and state):* \_\_\_\_\_  
 the following **documents** *(specify):*

The documents are listed in the *Attachment to Proof of Service by First-Class Mail - Civil (Documents Served)* (form POS-030(D)).

4. I served the documents by enclosing them in an envelope and *(check one)*:
  - a.  **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
  - b.  **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelope was addressed and mailed as follows:
  - a. **Name** of person served:
  - b. **Address** of person served:

The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail-Civil (Persons Served)* (POS-030(P)).

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 OF PERSON COMPLETING THIS FORM) (SIGNATURE OF PERSON COMPLETING THIS FORM)

## INFORMATION SHEET FOR PROOF OF SERVICE BY FIRST-CLASS MAIL - CIVIL

*(This information sheet is not part of the Proof of Service and does not need to be copied, served, or filed.)*

**NOTE:** This form should **not** be used for proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Use these instructions to complete the *Proof of Service by First-Class Mail - Civil* (form POS-030).

A person over 18 years of age must serve the documents. There are two main ways to serve documents: (1) by personal delivery and (2) by mail. Certain documents must be personally served. You must determine whether personal service is required for a document. Use the *Proof of Personal Service - Civil* (form POS-020) if the documents were personally served.

The person who served the documents by mail must complete a proof of service form for the documents served. **You cannot serve documents if you are a party to the action.**

### INSTRUCTIONS FOR THE PERSON WHO SERVED THE DOCUMENTS

The proof of service should be printed or typed. If you have Internet access, a fillable version of the Proof of Service form is available at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).

*Complete the top section of the proof of service form as follows:*

First box, left side : In this box print the name, address, and telephone number of the person *for* whom you served the documents.

Second box, left side : Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as on the documents that you served.

Third box, left side: Print the names of the Petitioner/Plaintiff and Respondent/Defendant in this box. Use the same names as are on the documents that you served.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The case number should be the same as the case number on the documents that you served.

*Complete items 1-5 as follows:*

1. You are stating that you are over the age of 18 and that you are not a party to this action. You are also stating that you either live in or are employed in the county where the mailing took place.
2. Print your home or business address.
3. Provide the date and place of the mailing and list the name of each document that you mailed. If you need more space to list the documents, check the box in item 3, complete the *Attachment to Proof of Service by First-Class Mail - Civil (Documents Served)*(form POS-030(D)), and attach it to form POS-030.
4. For item 4:  
Check box a if you personally put the documents in the regular U.S. mail.  
Check box b if you put the documents in the mail at your place of business.
5. Provide the name and address of each person to whom you mailed the documents. If you mailed the documents to more than one person, check the box in item 5, complete the *Attachment to Proof of Service by First-Class Mail - Civil (Persons Served)*(form POS-030(P)), and attach it to form POS-030.

**At the bottom, fill in the date on which you signed the form, print your name, and sign the form. By signing, you are stating under penalty of perjury that all the information you have provided on form POS-030 is true and correct.**