

PHONE  
(916)  
447-8101  
FAX  
(916)  
447-4750

L  
A  
W  
  
O  
F  
F  
I  
C  
E  
  
O  
F  
  
G  
A  
R  
Y  
  
L  
I  
N  
K

725 30th  
Street  
Suite 107  
Sacramento  
CA 95816

\*PLEASE ANSWER EVERY QUESTION WHICH APPLIES TO YOUR CASE\*

# EVICTIION QUESTIONNAIRE

## PROPERTY MANAGER

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

WORK PHONE: (\_\_\_\_) \_\_\_\_\_

Best time to call: \_\_\_\_\_

HOME PHONE: (\_\_\_\_) \_\_\_\_\_

Best time to call: \_\_\_\_\_

CELL PHONE: (\_\_\_\_) \_\_\_\_\_

FAX #: (\_\_\_\_) \_\_\_\_\_

BILL TO: \_\_\_\_\_

Name

Address

City

State

Zip

### QUESTION

1. THE OWNER OF THE PROPERTY IS:

2. THE PROPERTY ADDRESS IS:  
(The Tenant's Address)

3. THE NAME(S) OF ALL ADULT TENANTS  
IN POSSESSION OF THE PROPERTY ARE:  
(State all the names of all adults in possession whether  
they are named in the rental agreement, whether they  
contracted with the landlord or whether in possession of  
the property with permission or not.)

4. THE NAMES OF ALL ADULT TENANTS  
WHO SIGNED THE RENTAL  
AGREEMENT ARE:

5. THE RENTAL AGREEMENT WAS  
ENTERED INTO ON WHAT DATE:

6. STATE WHAT TYPE OF TENANCY:

7. AMOUNT OF MONTHLY RENT AT  
BEGINNING OF TENANCY:

8. RENT DUE DATE:

9. THE RENTAL AGREEMENT IS:

10. THE RENTAL AGREEMENT WAS  
ENTERED INTO WITH:

11. THE FOLLOWING NOTICE WAS  
SERVED ON THE TENANT(S):

12. THE NOTICE WAS SERVED IN  
THE FOLLOWING MANNER:

☐ PREJUDGMENT

13. I AM ATTACHING THE FOLLOWING  
DOCUMENTS:

**AMOUNT RECEIVED**

## OWNER OF PROPERTY

NAME: \_\_\_\_\_  
BUSINESS NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
(Not P.O. Box)

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

WORK PHONE: (\_\_\_\_) \_\_\_\_\_

HOME PHONE: (\_\_\_\_) \_\_\_\_\_

CELL PHONE: (\_\_\_\_) \_\_\_\_\_

FAX #: (\_\_\_\_) \_\_\_\_\_

### ANSWER

☐ AN INDIVIDUAL OVER THE AGE OF 18 YEARS ☐ A PARTNERSHIP ☐ General ☐ Limited  
☐ TRUST ☐ LLC ☐ Corporation ☐ Gen. Partner's Name \_\_\_\_\_  
☐ OTHER \_\_\_\_\_ ☐ IS THERE A FICTITIOUS BUSINESS NAME STATEMENT?

Number and street (designate Street, Way, Blvd. etc.)

Apt. #

City

Zip

#### RENT DUE & UNPAID

1. _____	JAN. \$ _____	JUL. \$ _____
2. _____	FEB. _____	AUG. _____
3. _____	MAR. _____	SEP. _____
1. _____	APR. _____	OCT. _____
2. _____	MAY. _____	NOV. _____
3. _____	JUN. _____	DEC. _____

WITH \_\_\_\_\_

THESE \_\_\_\_\_

TENANTS \_\_\_\_\_

☐ MONTH TO MONTH

☐ LEASE

Fair Rental Value: \_\_\_\_\_

☐ OTHER (specify): \_\_\_\_\_

\$ \_\_\_\_\_ IF MONTHLY RENT HAS INCREASED, STATE WHEN:  
HOW MUCH? \$ \_\_\_\_\_

☐ FIRST DAY OF THE MONTH ☐ OTHER (specify): \_\_\_\_\_

☐ WRITTEN ☐ ORAL

☐ THE OWNER

☐ THE OWNERS PREDECESSOR IN INTEREST

☐ THE OWNER'S AGENT

☐ OTHER (specify): \_\_\_\_\_

☐ 3 DAY NOTICE TO PAY RENT OR QUIT

☐ 3 DAY PERFORM COVENANT OR QUIT

☐ 30 DAY NOTICE TO TERMINATE

☐ 60 DAY NOTICE TO TERMINATE

☐ 3 DAY NOTICE TO QUIT

☐ OTHER (specify): \_\_\_\_\_

1. ☐ by personally handing a copy to defendant on (date): \_\_\_\_\_

2. ☐ by leaving a copy with (name or description) \_\_\_\_\_ a person of  
suitable age or discretion on (date): \_\_\_\_\_ at defendant's ☐ residence or ☐ business  
AND mailing a copy to defendant at his place of residence on (date): \_\_\_\_\_  
because defendant cannot be found at his residence or usual place of business.

3. ☐ by POSTING a copy on the premises on (date): \_\_\_\_\_

AND MAILING a copy to defendant at the premises on (date): \_\_\_\_\_

☐ because defendant's residence and usual place of business can not be ascertained

☐ because no person of suitable age or discretion can there be found

☐ WRITTEN AGREEMENT

☐ NOTICE TO QUIT

☐ ADDENDUM TO RENTAL AGREEMENT

☐ NOTICE TO CHANGE TERMS OF TENANCY

☐ OTHER (Specify): \_\_\_\_\_

\$

OTHER ARRANGEMENTS \_\_\_\_\_

CHECK # \_\_\_\_\_

DRIVER'S LICENSE # \_\_\_\_\_

VISA / MC / DISC # \_\_\_\_\_

EXP. DATE: \_\_\_\_\_

V CODE: \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that if called as a witness I could do so competently. I authorize the law office to insert appropriate information on law suit. By signing below, I acknowledge that I have read and understand the retainer agreement on the next page and am bound by said retainer agreement.

X \_\_\_\_\_  
Signature: Owner/Landlord/Authorized Agent

Page 1 of 12

**SIGN HERE**

Retainer Agreement on page 2

EMAIL \_\_\_\_\_

# UNLAWFUL DETAINER RETAINER AGREEMENT

## TYPICAL "DEFAULT" EVICTION

The minimum flat fee retainer to process a typical residential default eviction in Sacramento County is only \$655.00. This covers your attorney's fees of \$195.00 plus court filing fees, service of process fees for up to two defendants, fees for the Sheriff to serve the Writ of Possession and the fees for the Writ of Possession itself. It also includes a money judgment at your request. Specifically, the default eviction includes the following services at no extra cost to you:

- (1) Review of any relevant correspondence to determine legal validity
- (2) Drafting of Summons & Complaint for Unlawful Detainer
- (3) Filing of Summons & Complaint for Unlawful Detainer
- (4) Service of lawsuit upon the tenant- simple service up to two defendants
- (5) Mailing of Notice of Service from the serving company
- (6) Review of Proof of Service
- (7) Drafting and filing of the following paperwork:  
Request to Enter Default, Writ of Restitution,  
Clerk's Judgment for Restitution, Instructions for Sheriff
- (8) Upon client request (after possession is obtained) we will obtain a money judgment

## TYPICAL "TRIAL" EVICTION

If the tenant does answer the *Summons & Complaint*, or files opposing papers, there will be an additional fee of \$100.00 to obtain a copy of the Answer from the court, set the matter for a "court" trial, do up to a ½ hr "trial-prep", engage in up to one-half hour court trial, prepare a standard judgment, and process the paperwork with the court and the Sheriff's office.

- (1) Obtaining and reviewing the tenant's Answer.
- (2) Mailing Answer to the client.
- (3) Preparation and filing of a Request to Set Civil Case
- (4) Client trial preparation conference of up to 30 minutes
- (5) Sending a Notice of Trial to the client
- (6) Court trial of up to one hour
- (7) Preparation of a standard "Judgment After Trial"
- (8) Preparation of the Memorandum of Costs
- (9) Preparation of the Writ of Possession/Instructions to Sheriff
- (10) Delivery of the Writ of Possession to the Sheriff's Office

## POTENTIAL "EXTRAORDINARY" SERVICES/COSTS

There could be other extraordinary services/costs depending on how we need to respond to what the tenant does or what occurs in the case. The following illustrates the most typical "extraordinary" services that may be necessary in your case:

<b>\$100 Per Hour:</b>	Court trial or hearing preparation in excess of 30 minutes Court trial or hearing that exceeds one hour
<b>\$200 Per Hour:</b>	Attorney attendance at court hearing (other than trial – up to one hour) Points & Authorities/Legal briefs/Legal Research Preparation of Notices to Quit/Section 8/HUD Travel Time/Custom Stipulations/Consultation with Mr. Link Drafting Motions and Opposition to Motions Settlement negotiations with clients/attorneys/tenants
<b>\$275 Per Hour:</b>	Depositions/Interrogatories/Answers to Interrogatories Jury trial preparation/Jury trial/Personal Inspection of premises
<b>\$25 Per Item:</b>	Preparation of Satisfaction of Judgment Preparation of Writ of Possession for Re-posting Draft and filing of Dismissal/Substitution of Attorney Pre-Judgment Claim of Tenancy
<b>\$50 Per Item:</b>	Preparation of Declaration under Penalty of Perjury Preparation of Judgment Upon Declaration Motion for Attorneys fees or a simple Subpoena Refusal letters
<b>\$75 Per item:</b>	Drafting and filing of a Request for Order to Post Summons & Complaint Preparation of Standard Stipulated Judgment/Stipulation & Order Preparation of a simple Subpoena Duces Tecum

**Extraordinary Costs:** Advanced filing fee for a court motion, additional service attempts by process server, Sheriff Re-posting fee, Writ of Execution fee-collection, Abstract of Judgment, Service upon additional defendants beyond two/Certified mailings, Motion for Attorneys Fees etc.

Further, the tenant or tenant's attorney may contact this office to engage in settlement negotiations, or have you answer interrogatories or attend depositions of witnesses. We may also be forced to wait for an available courtroom for hours on end, or the trial may take longer than the typical one hour. For the extraordinary services or costs as described in part above, you will be billed accordingly. Any time spent by the office manager for settlement negotiations will be billed at the rate of \$175 per hour. The Law Office is extremely busy representing many clients. Mr. Link employs and trains staff for the purpose of processing, answering and handling routine questions that are presented with each lawsuit or case for which we are retained. Occasionally, a client or manager overwhelmingly feels the absolute need to speak with Mr. Link personally – even though an employee has provided answers to the client's inquiries as to status and standard procedures. In these instances, the undersigned understands that if according to the desire of the client speaking personally with Mr. Link is imperative, the minimum fee for such expenditure of time is \$100 for which the client will be billed. Any time personally spent by Mr. Link beyond thirty minutes will be billed at the proportional rate of \$200 per hour.

I, the undersigned, acknowledge that I have read and understood the foregoing fee structure of the Law Office of Gary Link and agree to pay for services rendered and costs advanced upon receipt of a billing statement. I further acknowledge that I have read and understood the *ADVISEMENTS AND INSTRUCTIONS TO ALL CLIENTS, REFUND POLICY, CLARIFICATION & DISCLAIMERS, and CLIENT RESPONSIBILITIES DURING REPRESENTATION*. I acknowledge that I am in receipt of those documents. If I am the property manager or agent for the owner of the property, it is represented by me that I am authorized to execute this agreement for and on behalf of the owner/landlord and with the permission and consent of the owner. It is further understood and agreed that if the undersigned is not the owner, that the Law Office will require full payment for services rendered or for costs of suit, from either or both parties.

I authorize, in advance, use of the charge card reflected on the Eviction Questionnaire for payment of any additional "trial" or "extraordinary" billings pursuant to this agreement. I understand that a copy of any charge receipt will be sent to me with a copy of the billing.

It is further understood and agreed that the undersigned hereby authorizes the Law Office of Gary Link to engage in collection proceedings based upon a fee of 1/3 of the amount collected for collection services. The Law Offices hereby advises the undersigned that collection by this office includes entering into stipulations for payment with former tenant(s), wage garnishments and bank levies. The Law Office does not engage in "skip tracing" efforts to locate and ascertain the assets or solvency of the former tenants. The Law Office does not engage in bankruptcy work; however, we will gladly refer you to a bankruptcy attorney who is familiar with landlord-tenant matters. IF YOU WISH TO HAVE A MONEY JUDGMENT AGAINST YOUR TENANT, YOU MUST NOTIFY THE LAW OFFICE FOR EACH CASE AFTER THE TENANT HAS VACATED. WE DO NOT AUTOMATICALLY OBTAIN MONEY JUDGMENTS AGAINST YOUR FORMER TENANTS. Effective 01/01/12. Fees, costs or court charges are subject to change at option of Law Office.

DATED: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

**SIGN HERE**

## INSTRUCTIONS TO PROCESS SERVING COMPANY - *Let's get the job done ... fast!*

The primary goal of THE LAW OFFICE OF GARY L. LINK is to process your eviction cases in as expeditious a manner as possible. In pursuit of that goal we seek to eliminate all uncertainties throughout the entire eviction process. Accordingly, please provide the process servers with an accurate physical description of your tenant(s). This description is given to the process servers when they are assigned the task of serving legal papers. In the event that the process serving company is successful in serving your tenant, you will receive a postcard from the process server which indicates the date of the accomplished serve. In the event that the process serving company is unsuccessful after 5 attempts, they will contact you directly to discuss what additional efforts must be engaged in to personally serve your tenant. Please give the following information to the process server:

YOUR NAME: \_\_\_\_\_ YOUR PHONE # Day: ( ) \_\_\_\_\_  
(Not the name of your tenant) Night: ( ) \_\_\_\_\_

### SPECIFIC INSTRUCTIONS TO PROCESS SERVER

UPON RECEIPT OF THESE INSTRUCTIONS PLEASE MAKE AT LEAST FIVE ATTEMPTS TO ACCOMPLISH PERSONAL SERVICE ON THE TENANT(S) DESCRIBED BELOW. IF YOU ARE SUCCESSFUL, IMMEDIATELY MAIL A "NOTICE OF SERVICE OF 'SUMMONS & COMPLAINT'" TO ME. IF YOU ARE UNSUCCESSFUL AFTER 5 PROMPT AND DILIGENT ATTEMPTS, PLEASE CONTACT ME IMMEDIATELY AT THE PHONE NUMBERS STATED ABOVE.

Check One

Yes ☐ No ☐

DO YOU NEED A PASSKEY OR SECURITY CODE TO SERVE THE TENANT???

THE PASS CODE IS: \_\_\_\_\_: PLEASE CALL ME ALSO.

(If the client fails to provide access when needed there will be an additional process serving fee of \$10.00)

TENANT'S ADDRESS: \_\_\_\_\_

TENANT'S PHONE #: ( ) \_\_\_\_\_ IS ANY TENANT IN JAIL? Yes ☐ No ☐

DO YOU SUSPECT DRUGS OR WEAPONS AT THE PREMISES? Yes ☐ No ☐ ARE THERE DOGS AT THE PREMISES? Yes ☐ No ☐

DESCRIBE TENANT'S CAR(S): \_\_\_\_\_ TENANTS PARKING SPACE # \_\_\_\_\_

SPECIAL COMMENTS TO PROCESS SERVER: \_\_\_\_\_

NAME OF TENANT #1: \_\_\_\_\_

SEX: Male ☐ Female ☐ APPROXIMATE AGE: \_\_\_\_\_ RACE: Caucasian ☐ Black ☐ Spanish ☐ Asian ☐ Persian ☐

APPROXIMATE HEIGHT: \_\_\_\_\_ APPROXIMATE WEIGHT: \_\_\_\_\_

HAIR COLOR: \_\_\_\_\_ HAIR STYLE: \_\_\_\_\_ EYE COLOR: \_\_\_\_\_

FACIAL HAIR: Clean shaven ☐ Beard ☐ Moustache ☐ Goatee ☐ ATTOOS (Describe): \_\_\_\_\_

UNIQUE PHYSICAL CHARACTERISTICS: \_\_\_\_\_

BEST TIME TO SERVE TENANT: \_\_\_\_\_

TENANT'S WORK NAME & ADDRESS: \_\_\_\_\_

NAME OF TENANT #2: \_\_\_\_\_

SEX: Male ☐ Female ☐ APPROXIMATE AGE: \_\_\_\_\_ RACE: Caucasian ☐ Black ☐ Spanish ☐ Asian ☐ Persian ☐

APPROXIMATE HEIGHT: \_\_\_\_\_ APPROXIMATE WEIGHT: \_\_\_\_\_

HAIR COLOR: \_\_\_\_\_ HAIR STYLE: \_\_\_\_\_ EYE COLOR: \_\_\_\_\_

FACIAL HAIR: Clean shaven ☐ Beard ☐ Moustache ☐ Goatee ☐ ATTOOS (Describe): \_\_\_\_\_

UNIQUE PHYSICAL CHARACTERISTICS: \_\_\_\_\_

BEST TIME TO SERVE TENANT: \_\_\_\_\_

TENANT'S WORK NAME & ADDRESS: \_\_\_\_\_

## VERIFICATION UNDER PENALTY OF PERJURY-UNLAWFUL DETAINER

(Each client must sign in appropriate location)

### **IF YOU ARE A PROPERTY MANAGER OR AUTHORIZED AGENT FOR THE OWNER OF THE PROPERTY: SIGN THIS TOP VERIFICATION**

I, the undersigned, declare under penalty of perjury as follows:

1. I am the property manager or authorized agent for the owner or landlord/lessor of the real property described in the Complaint for Unlawful Detainer and owned or leased by the Plaintiff/Owner/Landlord/Lessor of the Premises.
2. If the Plaintiff is described in the Complaint as a corporation, I declare that I am an officer of the Plaintiff corporation, a corporation organized under the laws of the State of California, and I have been authorized to execute this verification on its behalf.
3. I am duly and expressly authorized to verify said Complaint on the Plaintiff's behalf. Said complaint for Unlawful Detainer is attached hereto. I am verifying said complaint for Unlawful Detainer on behalf of the owner or the landlord/lessor because the facts stated therein are known by myself and may not be known to the owner or landlord/lessor.
4. I have read said complaint for Unlawful Detainer and know the contents thereof.
5. I certify that the same is true of my own knowledge except as to those matters, which are stated therein upon my information and belief, and as to those matters, I believe them to be true.
6. I declare under penalty of perjury under the laws of the State of California that I am an adult and at least 18 years of age, and that the foregoing is true and correct and that if called as a witness, I could do so competently. This declaration under penalty of perjury was executed in \_\_\_\_\_, California, on the below stated date.

DATED \_\_\_\_\_

\_\_\_\_\_  
Print your name

\_\_\_\_\_  
Sign your name: Property Manager/Authorized Agent

---

### **IF YOU ARE THE OWNER OR LANDLORD/LESSOR OF THE PROPERTY WHERE YOUR TENANT RESIDES: SIGN THIS BOTTOM VERIFICATION**

I, the undersigned, declare under penalty of perjury as follows:

1. I am the plaintiff in the above-entitled action, and owner or landlord/lessor of the real property described in the complaint for Unlawful Detainer, which is attached hereto.
2. I have read said complaint for Unlawful Detainer and know the contents thereof.
3. I certify that the same is true of my knowledge except as to those matters, which are stated therein upon my information and belief and as to those matters, I believe them to be true.
4. I declare under penalty of perjury under the laws of the State of California that I am an adult and at least 18 years of age, and that the foregoing is true and correct and that if called as a witness, I could do so competently. This declaration under penalty of perjury was executed in \_\_\_\_\_, California, on the below stated date.

DATED \_\_\_\_\_

\_\_\_\_\_  
Print your name

\_\_\_\_\_  
Sign your name: Plaintiff/Owner/Landlord/Lessor

## VERIFICATION UNDER PENALTY OF PERJURY-UNLAWFUL DETAINER

(Each client must sign in appropriate location)

### **IF YOU ARE A PROPERTY MANAGER OR AUTHORIZED AGENT FOR THE OWNER OF THE PROPERTY:** **SIGN THIS TOP VERIFICATION**

I, the undersigned, declare under penalty of perjury as follows:

1. I am the property manager or authorized agent for the owner or landlord/lessor of the real property described in the Complaint for Unlawful Detainer and owned or leased by the Plaintiff/Owner/Landlord/Lessor of the Premises.
2. If the Plaintiff is described in the Complaint as a corporation, I declare that I am an officer of the Plaintiff corporation, a corporation organized under the laws of the State of California, and I have been authorized to execute this verification on its behalf.
3. I am duly and expressly authorized to verify said Complaint on the Plaintiff's behalf. Said complaint for Unlawful Detainer is attached hereto. I am verifying said complaint for Unlawful Detainer on behalf of the owner or the landlord/lessor because the facts stated therein are known by myself and may not be known to the owner or landlord/lessor.
4. I have read said complaint for Unlawful Detainer and know the contents thereof.
5. I certify that the same is true of my own knowledge except as to those matters, which are stated therein upon my information and belief, and as to those matters, I believe them to be true.
6. I declare under penalty of perjury under the laws of the State of California that I am an adult and at least 18 years of age, and that the foregoing is true and correct and that if called as a witness, I could do so competently. This declaration under penalty of perjury was executed in \_\_\_\_\_, California, on the below stated date.

DATED \_\_\_\_\_

\_\_\_\_\_  
Print your name

\_\_\_\_\_  
Sign your name: Property Manager/Authorized Agent

---

### **IF YOU ARE THE OWNER OR LANDLORD/LESSOR OF THE PROPERTY WHERE YOUR TENANT RESIDES:** **SIGN THIS BOTTOM VERIFICATION**

I, the undersigned, declare under penalty of perjury as follows:

1. I am the plaintiff in the above-entitled action, and owner or landlord/lessor of the real property described in the complaint for Unlawful Detainer, which is attached hereto.
2. I have read said complaint for Unlawful Detainer and know the contents thereof.
3. I certify that the same is true of my knowledge except as to those matters, which are stated therein upon my information and belief and as to those matters, I believe them to be true.
4. I declare under penalty of perjury under the laws of the State of California that I am an adult and at least 18 years of age, and that the foregoing is true and correct and that if called as a witness, I could do so competently. This declaration under penalty of perjury was executed in \_\_\_\_\_, California, on the below stated date.

DATED \_\_\_\_\_

\_\_\_\_\_  
Print your name

\_\_\_\_\_  
Sign your name: Plaintiff/Owner/Landlord/Lessor

# **SPECIAL ADVISEMENT**

## **\*\* TENANT DELAY TACTIC \*\***

### **"Claims of Possession" or "Arietta" claims**

In either a contested or an uncontested unlawful detainer case, a claim of possession or Arietta claim may be filed by a person who is not named in the unlawful detainer action or the Writ of Possession, and who claims to have a right to occupancy in the rental unit if a Prejudgment Claim of Right to Possession was not served with the summons and complaint. Typically, such claims are filed with the Sheriff as the Sheriff executes on the Writ of Possession. If such a claim is filed, the eviction must stop and a court hearing must be held within five to fifteen days to determine if that person has a legitimate claim on the unit. This is a significant delay that can be avoided by the filing of appropriate paperwork.

If the claim of possession is upheld, the owner must start the unlawful detainer process completely over, naming that occupant in the suit and subsequent Writ of Execution. If the court determines that the person has no legitimate claim of possession to the unit, then the eviction may go forward. This claim of possession, many times filed by "phantom" non-existing individuals is frequently used simply to delay the eviction. This delay can be prevented.

#### **THE SOLUTION**

In 1990, the legislature gave property owners a means to combat this delaying tactic on the part of the tenant. Under this new law, owners can have their attorney serve an additional form (Prejudgment Claim of Right to Possession), along with the summons and complaint, calling for those individuals who are residents, but who are not known or named on the notices to quit or on the lawsuit itself, to file their claims shortly after the summons and complaint are served on the known and named residents - not in the final stages of the process. This procedure prohibits the filing of Arietta claims after the judgment for the Writ of Possession has been processed.

For the extra preparation, copying, and service of the additional Prejudgment Claim of Right to Possession we charge \$25 in addition to our standard low rates. We wish to give you the option of choosing to not file this particular form, and saving the fee. If that is your choice, we ask you to sign this waiver that indicates that we gave you an option to file or not file the Prejudgment Claim of Right to Possession form.

Check One:

       **I DO NOT WISH TO HAVE THE LAW OFFICE FILE THE PREJUDGMENT CLAIM OF POSSESSION FORM. I UNDERSTAND THAT FAILURE TO DO SO MAY RESULT IN SIGNIFICANT DELAYS IN THE PROCESSING OF MY EVICTION; I AM WILLING TO ACCEPT THAT RISK BY NOT FILING THIS FORM.**

       **I DO WANT THE LAW OFFICE TO FILE THE PREJUDGMENT CLAIM OF POSSESSION FORM TO AVOID THE POTENTIAL FOR SIGNIFICANT DELAYS.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
OWNER, LANDLORD, PROPERTY MANAGER

**SIGN HERE**

# PRE-LAWSUIT CLIENT QUESTIONNAIRE

Please check one

- |                                 |                                |  |
|---------------------------------|--------------------------------|--|
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Has your tenant complained about the condition of the tenancy premises within the last 180 days?<br><b>Please describe:</b>  |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Has your tenant complained recently (written or verbal) that something is wrong with the condition of the premises?<br><b>Please describe:</b>   |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Have you received any notification of complaints from the Health Department or County/City Code Enforcement?<br><b>Please specify:</b>   |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Is the tenant acting or has the tenant recently acted in violation of any provision of the written rental agreement?<br>Ie. Unauthorized pets, drug dealing, disturbances of the peace, etc.<br><b>Please specify violations and dates:</b>  |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Do you suspect that there are any unauthorized occupants residing in the property?<br><b>Please state name(s):</b>   |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Did you give to your tenant a "Notice of Right to Pre-Termination of Tenancy Inspection"?  |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Have you or your tenant filed for Bankruptcy in the last 12 months?<br>If yes, please specify:   |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Are any of your tenant(s) members of the military?   |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Have you or your tenant filed any lawsuit against each other?  |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Is the real property (tenancy) in foreclosure; has a Notice of Default or Notice of Sale been served?  |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Did you purchase this property from a foreclosure sale; or subsequent to a foreclosure sale that has occurred in the last three years?   |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Do you have operable smoke detectors installed inside the unit?  |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Do you have an operable carbon monoxide detector installed inside the unit?  |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Is the hot water heater earthquake strapped?   |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Does the front main swinging entry door have a separate deadbolt that is at least 13/16" in length-1" if in the City of Sacramento?  |
| YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> | Have you registered your rental property with the City or County of Sacramento Rental Inspection Program, or with any applicable city or county rental housing ordinance?<br><b>Many local cities and counties require that a landlord register the real property as a rental property prior to the beginning of a tenancy. Each jurisdiction has different registration requirements. Merely paying a rental housing inspection fee in conjunction with a utility billing does not necessarily mean that the rental unit is properly registered. There are often other more defined registration and paperwork requirements. There may be severe consequences for your failure to have the rental unit registered prior to the tenancy which include, but are not necessarily limited to fines, penalties, loss of an opportunity to obtain possession of the property as a result of a lawsuit for Unlawful Detainer, and loss of an opportunity to obtain a money judgment against your tenant for unpaid rent and other rental charges. If you check "No" to this box, please schedule an appointment to speak with either the office manager Elizabeth or with Mr. Link about the ramifications and options. For more information before speaking with us you may also wish to access your jurisdiction's rental housing inspection ordinance to learn about the registration requirements.</b> |

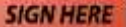
ATTORNEY OR PARTY WITHOUT ATTORNEY (name, State Bar number, and address):

FOR COURT USE ONLY

# THIS FORM ONLY REQUIRES THE DATE AND YOUR SIGNATURE PLEASE DO NOT COMPLETE THE FORM

In an effort to reduce your inconvenience in being required to make a return trip to the office, or waiting until the actual judicial council form is completed by one of our staff, signature hereon acknowledges that the signing party has reviewed the contents of the blank Judicial Council form. The signator acknowledges under penalty of perjury that the information set forth on the Eviction Questionnaire filled in by the signing party is true and correct and that the law office will be transferring the appropriate information from the questionnaire to the judicial council form.

DATED: \_\_\_\_\_

SIGNED: \_\_\_\_\_  
Owner/Landlord/Authorized Agent SIGN HERE

## COMPLAINT - UNLAWFUL DETAINER\*

CASE NUMBER: \_\_\_\_\_

☐ COMPLAINT ☐ AMENDED COMPLAINT (*Amendment Number*): \_\_\_\_\_Jurisdiction (*check all that apply*):☐ ACTION IS A LIMITED CIVIL CASEAmount demanded ☐ does not exceed \$10,000☐ exceeds \$10,000 but does not exceed \$25,000☐ ACTION IS AN UNLIMITED CIVIL CASE (amount demanded exceeds \$25,000)ACTION IS RECLASSIFIED by this amended complaint or cross-complaint (*check all that apply*):☐ from unlawful detainer to general unlimited civil (possession not in issue)☐ from limited to unlimited☐ from unlawful detainer to general limited civil (possession not in issue)☐ from unlimited to limited1. PLAINTIFF (*name each*):alleges causes of action against DEFENDANT (*name each*):

2. a. Plaintiff is (1) ☐ an individual over the age of 18 years. (4) ☐ a partnership.  
 (2) ☐ a public agency. (5) ☐ a corporation.  
 (3) ☐ other (*specify*): \_\_\_\_\_

b. ☐ Plaintiff has complied with the fictitious business name laws and is doing business under the fictitious name of (*specify*): \_\_\_\_\_3. Defendant named above is in possession of the premises located at (*street address, apt no., city, zip code, and county*): \_\_\_\_\_4. Plaintiffs interest in the premises is ☐ as owner ☐ other (*specify*): \_\_\_\_\_

5. The true names and capacities of defendants sued as Does are unknown to plaintiff.

6. a. on or about (date): \_\_\_\_\_ defendant (*name each*): \_\_\_\_\_(1) agreed to rent the premises as a ☐ month-to-month tenancy ☐ other tenancy (*specify*): \_\_\_\_\_(2) agreed to pay rent of \$ \_\_\_\_\_ payable ☐ monthly ☐ other (*specify frequency*): \_\_\_\_\_(3) agreed to pay rent on the ☐ First of the month ☐ other day (*specify*): \_\_\_\_\_b. This ☐ written ☐ oral agreement was made with(1) ☐ plaintiff.(3) ☐ plaintiff's predecessor in interest.(2) ☐ plaintiff's agent.(4) ☐ other (*specify*): \_\_\_\_\_

• NOTE: Do not use this form for evictions after sale (Code Civ. Proc., § 1161 a).

Page 1 of 3



PLAINTIFF (Name): _____ DEFENDANT (Name): _____	CASE NUMBER: _____
--	--------------------

**6. c. The defendants not named in item 6a are**

- (1) ☐ subtenants.  
 (2) ☐ assignees.  
 (3) ☐ other (specify): \_\_\_\_\_

d. ☐ The agreement was later changed as follows (specify): \_\_\_\_\_

e. ☐ A copy of the written agreement, including any addenda or attachments that form the basis of this complaint, is attached and labeled Exhibit 1. (Required for residential property, unless item 6f is checked. See Code Civ. Proc., § 1166.)

f. ☐ (For residential property) A copy of the written agreement is not attached because (specify reason):

- (1) ☐ the written agreement is not in the possession of the landlord or the landlord's employees or agents.  
 (2) ☐ this action is solely for nonpayment of rent (Code Civ. Proc., § 1161(2)).

**7. a. Defendant (name each):**

was served the following notice on the same date and in the same manner:

- |   |  |
|---|--|
| (1) <input type="checkbox"/> 3-day notice to pay rent or quit | (4) <input type="checkbox"/> 3-day notice to perform covenants or quit |
| (2) <input type="checkbox"/> 30-day notice to quit            | (5) <input type="checkbox"/> 3-day notice to quit                      |
| (3) <input type="checkbox"/> 60-day notice to quit            | (6) <input type="checkbox"/> Other (specify): _____                    |

b. (1) On (date): \_\_\_\_\_ the period stated in the notice expired at the end of the day.

(2) Defendants failed to comply with the requirements of the notice by that date.

c. All facts stated in the notice are true.

d. ☐ The notice included an election of forfeiture.

e. ☐ A copy of the notice is attached and labeled Exhibit 2. (Required for residential property. See Code Civ. Proc., § 1166.)

f. ☐ One or more defendants were served (1) with a different notice, (2) on a different date, or (3) in a different manner, as stated in Attachment 8c. (Check item 8c and attach a statement providing the information required by items 7a-e and 8 for each defendant.)

**8. a. ☐ The notice in item 7a was served on the defendant named in item 7a as follows:**

- (1) ☐ by personally handing a copy to defendant on (date): \_\_\_\_\_
- (2) ☐ by leaving a copy with (name or description): \_\_\_\_\_ at defendant's \_\_\_\_\_  
 a person of suitable age and discretion, on (date): \_\_\_\_\_ residence \_\_\_\_\_ business AND mailing a copy to defendant at defendant's place of residence on (date): \_\_\_\_\_ because defendant cannot be found at defendant's residence or usual place of business.
- (3) ☐ by posting a copy on the premises on (date): \_\_\_\_\_ AND giving a copy to a person found residing at the premises AND mailing a copy to defendant at the premises on (date): \_\_\_\_\_
- (a) ☐ because defendant's residence and usual place of business cannot be ascertained OR
- (b) ☐ because no person of suitable age or discretion can be found there.
- (4) ☐ (Not for 3-day notice; see Civil Code, § 1946 before using) by sending a copy by certified or registered mail addressed to defendant on (date): \_\_\_\_\_
- (5) ☐ (Not for residential tenancies, - see Civil Code, § 1953 before using) in the manner specified in a written commercial lease between the parties.

b. ☐ (Name): \_\_\_\_\_ was served on behalf of all defendants who signed a joint written rental agreement.

c. ☐ Information about service of notice on the defendants alleged in item 7f is stated in Attachment 8c.

d. ☐ Proof of service of the notice in item 7a is attached and labeled Exhibit 3.

PLAINTIFF (Name): _____ DEFENDANT (Name): _____	CASE NUMBER: _____
--	--------------------

9. ☐ Plaintiff demands possession from each defendant because of expiration of a fixed-term lease.
10. ☐ At the time the 3-day notice to pay rent or quit was served, the amount of rent due was \$ \_\_\_\_\_
11. ☐ The fair rental value of the premises is \$ \_\_\_\_\_ per day.
12. ☐ Defendant's continued possession is malicious, and plaintiff is entitled to statutory damages under Code of Civil Procedure section 11 74(b). (State specific facts supporting a claim up to \$600 in *Attachment 12.*)
13. ☐ A written agreement between the parties provides for attorney fees.
14. ☐ Defendant's tenancy is subject to the local rent control or eviction control ordinance of (*city or county, title of ordinance, and date of passage*): \_\_\_\_\_

Plaintiff has met all applicable requirements of the ordinances.

15. ☐ Other allegations are stated in Attachment 15.

16. Plaintiff accepts the jurisdictional limit, if any, of the court.

**17. PLAINTIFF REQUESTS**

- |   |  |
|---|--|
| a. possession of the premises.<br>b. costs incurred in this proceeding:<br>c. <input type="checkbox"/> past-due rent of \$ _____<br>d. <input type="checkbox"/> reasonable attorney fees.<br>e. <input type="checkbox"/> forfeiture of the agreement. | f. <input type="checkbox"/> damages at the rate stated in item 11 from _____ (date): _____ for each day that defendants remain in possession through entry of judgment.<br>g. <input type="checkbox"/> statutory damages up to \$600 for the conduct alleged in item 12.<br>h. <input type="checkbox"/> other (specify): _____ |
|---|--|

18. ☐ Number of pages attached (specify): ☐

**UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400-6415)**

19. (*Complete in all cases.*) An unlawful detainer assistant ☐ did not ☐ did for compensation give advice or assistance with this form. (*If plaintiff has received any help or advice for pay from an unlawful detainer assistant, state.*)

- |  |  |
|--|--|
| a. Assistant's name:<br>b. Street address, city, and zip code: | c. Telephone No.:<br>d. County of registration:<br>e. Registration No.:<br>f. Expires on (date): |
|--|--|

Date: \_\_\_\_\_

GARY L. LINK  
(TYPE OR PRINT NAME)

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

**VERIFICATION**

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

I am the plaintiff in this proceeding and have read this complaint. 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 PLAINTIFF)

# The Law Office of Gary L. Link, Inc.

(Risk Advisement – Waiting an additional 5 days)

## SPECIAL ADVISEMENT OF RISKS REGARDING WAITING AN **ADDITIONAL 5 DAYS DUE TO “SUB-SERVICE AND MAILING” OR “POSTING AND MAILING” A NOTICE TO QUIT**

When filing a lawsuit for Unlawful Detainer based on a Notice to Pay Rent or Quit, the method of service will dictate how much time you will need to wait prior to the lawsuit being filed. If the Notice to Pay Rent or Quit was served by “sub-serving and mailing” or “posting and mailing” because no person of suitable age and discretion could be served at the premises or a place of employment for the tenant is not known, then this law office strongly advises you to wait an **additional five days** after the notice has been expired before filing the lawsuit for Unlawful Detainer.

Code of Civil Procedure §1013 requires five additional days for mailing to be added to deadlines in California for responding or acting on a notice period. It is unclear from the case law as to whether this code section applies to Unlawful Detainer Notices to Quit or not. There is persuasive case law which states that the additional five days beyond the expiration date of a notice of termination of tenancy is not necessary for a termination notice (30/60/90), however, this case is not dealing with a Notice to Pay Rent or Quit. Although the case law is unclear for a Notice to Pay Rent or Quit, it is safer for you as a landlord to wait the additional five days for the mailing time as specified above.

**\*\*\*For a full reading of the cases and code sections referenced above, please contact our office.**

### POTENTIAL PROBLEM AREAS:

You are hereby advised that due to the method of service utilized on your “Notice To Quit” that you have presented to the Law Office of Gary L. Link, Inc., there is a possibility that upon review of said notice by a judge or jury, there may be a determination made that said method and manner of service is defective, thereby rendering the lawsuit filed thereon invalid and/or premature. The result would be that you will need to re-issue another valid notice and re-initiate legal proceedings. In this event, you will have spent double the amount of attorneys fees and costs to prosecute the eviction of one particular residence.

The possibility is also raised that you will incur the risk of the tenant filing a malicious prosecution lawsuit, an abuse of process lawsuit, or a wrongful eviction lawsuit against you. Inherent within any of these lawsuits – whether the first eviction lawsuit or a malicious prosecution lawsuit is the possibility that you will also have to pay for your tenant’s legal fees as well as punitive damages for your wrongful conduct. It of course goes without saying, you will not obtain possession of the premises from your tenant.

IT IS HEREBY ACKNOWLEDGED THAT THE UNDERSIGNED CLIENT HAS BEEN ADVISED OF THE POTENTIAL INVALIDITY OF THE “NOTICE TO QUIT”, AND NONETHELESS WISHES TO ASSUME THE RISK THAT THE ABOVE DESCRIBED CONTINGENCY MAY OCCUR UPON THE FILING OF THE LAWSUIT FOR UNLAWFUL DETAINER.

THE CLIENT AGREES SPECIFICALLY TO HOLD THE LAW OFFICE OF GARY L. LINK, INC. FREE AND HARMLESS FROM ANY AND ALL LIABILITY AND OBLIGATIONS IN THE EVENT THAT THE TENANT CLAIMS THAT A WRONGFUL EVICTION LAWSUIT HAS BEEN FILED AGAINST THE TENANT. THIS HOLD HARMLESS OBLIGATION INCLUDES ATTORNEY FEES AND COSTS OF SUIT AS WELL AS A PROMISE TO DEFEND AND PROTECT THE LAW OFFICE AGAINST ANY SUCH CLAIMS OR POTENTIAL LITIGATION BROUGHT BY THE TENANT.

☐

**Yes**, I authorize the Law Office of Gary L. Link, Inc to wait the additional 5 days prior to filing the lawsuit for unlawful detainer.

☐

**No**, I do not authorize the Law Office of Gary L. Link, Inc to wait the additional 5 days and I wish to take the risk that the lawsuit could be filed prematurely, wherein this lawsuit may need to be dismissed and a new lawsuit may need to be filed.

DATED: \_\_\_\_\_

SIGNED: \_\_\_\_\_

CLIENT

**SIGN HERE**

CASE NAME: \_\_\_\_\_

*Sacramento County Sheriff Department*  
*Instructions for Unlawful Detainer Eviction*

**ALL INFORMATION MUST BE COMPLETED**

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Court Case Number

\_\_\_\_\_  
Defendants date(s) of birth \_\_\_\_\_

By virtue of the accompanying Writ of Possession in the above-entitled action, you are hereby instructed to return possession of the property described below to the creditor/agent identified.

\_\_\_\_\_  
Property Address (Must match address on back of Writ)

\_\_\_\_\_  
City/State/Zip Code

Please provide information on any issues that may pose an officer safety issue such as:

Violent toward Law Enforcement ☐ Prior Law Enforcement activity at this address ☐  
Illegal activity may be taking place at this address ☐ Assaultive ☐ Loose dogs in yard ☐  
Weapons in residence ☐ Marijuana Use ☐ Illegal drug use ☐ Mentally Disordered ☐  
If any of the above are checked, please describe or provide additions concerns: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Please check any of the following that apply:

Gated Community ☐ Children in Residence ☐ Elderly ☐ Disabled ☐  
Serious Medical Problems ☐

Is the unlawful ***detainer resulting*** from a foreclosure sale of a rental housing unit pursuant to CCP 1161a? Yes ☐ No ☐

The Deputy will contact the person/agent named below between 7:00 am - 1 1:00am to set an appointment for the lockout.

**It is the plaintiff's responsibility to provide entry into the residence (i.e. key, locksmith, maintenance person)**

\_\_\_\_\_  
Name of party to contact

Daytime ( ) \_\_\_\_\_

Cell ( ) \_\_\_\_\_

This section below requires the information and signature of the person named in the top box on the Writ.

\_\_\_\_\_  
Name (Please print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip Code

Daytime ( ) \_\_\_\_\_

Cell ( ) \_\_\_\_\_

\_\_\_\_\_  
Signature

The  
following  
12 pages  
are informational  
only:

Please read and keep  
for your records.

GARY LINK, Esq.  
725 30<sup>th</sup> Street, Suite 107  
Sacramento, CA 95816

Telephone (916) 447-8101  
Fax (916) 447-4750  
E-mail: [teamlink@pacbell.net](mailto:teamlink@pacbell.net)

## IMPORTANT NOTICE FOR ALL CLIENTS

October, 2012

### **EXPECT “COURT DELAYS” WITH THE COURT PROCESSING OF EVICTION FILES**

At the Law Office of Gary Link we take pride in processing your eviction cases in the most efficient and rapid manner possible. There are two major components to the quickest processing of any case: (1) the timeliness of our office, and (2) the timeliness of the court system. We continue to believe that we at the Law Office of Gary Link process your eviction cases in the most rapid manner possible.

The court is not processing cases as rapidly as it formerly did, nor as rapidly as we or landlords would prefer. Where, in the past, a lawsuit could be filed with the court, and the papers returned immediately for the process server to deliver to the tenant on the same evening, at the present time the court is frequently not returning the lawsuit document papers for ten to fourteen days from the date of delivery to the court. With regard to other documents submitted to the court, there have been and will be significant delays in the court processing of paperwork. These court processing delays are not a mechanism that the Law Office can change. The following text to our office from the Unlawful Detainer Division of the Superior Court dated October 20, 2011, clearly shows what is happening with the court processing of paperwork:

*“Recently large amounts of filings for both Small Claims and Unlawful Detainers have been flowing into our office. Whilst we pride ourselves on providing as quick and efficient return-of-filing service as we possibly can, we are noticing that our normal benchmark is not being able to be achieved. To that end, this notice is to communicate that we are working as fast and efficiently as we can to process any filings you have brought to us. Part of the attempt to provide equal and good service to everyone has caused a slight change in the lobby filings process over the past day or two. We have only been able to accept drop-off filings at the lobby windows and will need to continue to operate as such until we can bring the current back-log back into normal standards.”*

Nevertheless, at the Law Office of Gary Link we want you to know that we will continue to process our handling of all cases in the most rapid manner possible. At this office we are fully staffed and trained; we do not experience the same problems that the Superior Court is presently experiencing.

The purpose of this notice is to share with you the same frustration that we feel here at the office with the court’s slow down of the processing of paperwork. We have been in contact with the court personnel with regard to the court delays, and have been closely working with the court processing personnel and monitoring the timeliness of paperwork processing, yet at the present time the outlook for increasing the court “turnaround time” is not looking so good.

We thank you for your continuing business. **You have our assurance that at this office we will be doing all that we reasonably can to move all your cases forward in the most rapid manner possible.**

*Gary Link*

Gary Link  
Attorney at Law  
President Gary L. Link Inc.

# The Law Office of Gary Link

## (Advisements and Instructions to All Clients)

1-1-13



### Please Read and Retain For Your Records

#### How long will it take to evict my tenants?

Approximately 70% of all the cases filed with the Court will take approximately 15-30 days to obtain possession from the date that the tenant is served with a copy of the lawsuit (Summons & Complaint). The other approximately 30% of the cases will take approximately 45-60 days to obtain possession from the date that the tenant is served with a copy of the lawsuit. These statistics are based upon the filing and prosecution of over 40,000 eviction cases in Sacramento County by this office over the last thirty-three years.

Note that the 70% figure represents those cases where the tenants have been served with a copy of the lawsuit and have failed to file any opposing papers with the court. Consequently, this office will file a "default" against your tenant and instruct the Sheriff to evict your tenant. Occasionally some cases may take longer due to tenant's delay tactics.

#### Are there situations where the eviction process can be delayed?

Frankly, there are numerous situations, which will cause unavoidable delays in the processing of an eviction. The most frequent ones are listed below:

1. Your tenants avoid the process serving company and cannot be served with the lawsuit. We have instructed the process server to contact you directly if this situation should occur.
2. Ultimately, if the tenant cannot be personally served with the paperwork, we shall be required to file an application with the court to permit the posting of the Summons & Complaint on the tenant's door and to mail a copy to the tenant. **ANTICIPATED DELAY: App. 25 days.**
3. The tenant files a "Motion to Set Aside the Default" after the default has been taken. **ANTICIPATED DELAY: App. 30 days.**
4. The tenant files an "Application to Stay of Execution" on the basis of substantial hardship. **ANTICIPATED DELAY: Discretionary with the Court - may be anywhere from 3 to 45 days depending upon the circumstances.**

[www.sacramentolandlord.com](http://www.sacramentolandlord.com)

The Law Office of Gary Link 725 30<sup>th</sup> Street, Suite 107, Sacramento, CA 95816  
Phone (916) 447-8101 Fax (916) 447-4750

5. A third person files a "Claim of Tenancy" with the Court.

**ANTICIPATED DELAY: App. 20-30 days.**

6. The tenant or the tenant's attorney contacts us to attempt to resolve the case short of trial. In this event it may be beneficial for the case to be delayed until a resolution can be reached with the tenant.

**ANTICIPATED DELAY: This delay depends upon the particular circumstances of each case.**

### **What do I do if my tenant contacts me after the case has been given to the law office?**

If your tenant contacts you regarding the eviction or attempts to settle the case with you, you may discuss the potential terms of settlement with your tenant. Immediately after speaking with your tenant, contact the law office to prepare us for any anticipated phone call from the tenant. DO NOT simply instruct the tenant to call the law office without you first contacting us! We shall then be happy to discuss the terms of potential settlement.

### **What if I receive money from my tenant after the lawsuit is filed?**

If you receive any money from your tenant, do NOT cash or negotiate said sums unless and until you receive permission and approval from one of the attorneys at the law office. If you accept cash or negotiate any checks tendered to you without a written and signed agreement to the contrary, be advised that it may invalidate the lawsuit.

### **May I enter into any agreements with the tenant after the lawsuit is filed?**

After the lawsuit has been filed with the court, if your tenant contacts you, do NOT enter into any agreements with the tenant unless and until you first contact one of the attorneys at the law office. Any and all agreements must be in writing and in proper legal form. Do NOT attempt to prepare your own written settlement agreement with your tenant.

### **May I enter the premises of the tenant once a lawsuit has been filed?**

Generally, it is not recommended that you bother or disturb your tenant during the pendency of the litigation. However, you may legally enter the premises in situations of emergency, or upon proper advance 24 hour notice to your tenant for the purpose of making necessary or agreed repairs, decorations, alterations or improvements to the premises; to exhibit the premises to prospective or actual purchasers, mortgagees, tenants, workmen or contractors; to inspect or enter after the tenant has abandoned or surrendered possession of the premises; or pursuant to a previous written agreement with the tenant. Please do not abuse this privilege. The Law Office will provide you with a "Notice of Entry".

### **Do I need to send a security deposit statement to the tenant even if I have filed a lawsuit?**

Absolutely! Remember that within 21 days of the date that the tenant has vacated the premises you must send a "Disposition of Security Deposit Statement" to your tenant which will detail how much money, if any, has been applied to cleaning or repairs above and beyond normal wear and tear, or unpaid rents due pursuant to the terms of your rental agreement. If your rental agreement states a lesser amount of days, you must adhere to your rental agreement.

### **Will I obtain a money judgment against my tenant?**

In Unlawful Detainer actions, an additional part of the service provided to you by the Law Office of Gary Link is to obtain a money judgment against your tenant. This service is included in the initial retainer fee. In most "default" situations the money judgment typically includes unpaid rent through the day you obtain possession of the residence, attorneys fees against your tenant if there is a signed, written rental agreement that contains such a provision, as well as court costs.



Accordingly, after you obtain actual possession of the premises whether by Sheriff's lock-out, mutual agreement with the tenant, or otherwise, call the office to inform us of the actual date of possession. We will mail to you a Declaration to review, sign and return to our office. **Unless you return this information to us, we shall not be able to submit your money judgment to the court.**

**Can I collect upon the money judgment?**

After a judgment is obtained and upon your specific request and upon completion of the proper documentation, the Law Office of Gary Link will attempt to collect upon any money judgment obtained against your tenant. Upon collection by wage garnishment or bank levy we shall send you two-thirds of any sums collected from your tenant. After the money judgment is obtained against your tenant, complete the appropriate form to have a wage garnishment or bank levy processed.

**How long is my judgment valid?**

The judgment and the enforcement thereof is effective for ten (10) years from the day of the judgment. It may be renewed pursuant to the Civil Code sect. 683.010 et.seq. upon written request.

**What is an "abstract of judgment"?**

The recording of an abstract of judgment with the Sacramento County Recorder's Office becomes a lien upon all non-exempt present or after-acquired interests of the judgment debtor. Also, the filing of the "Abstract of Judgment" imparts notice to all persons of its contents and any subsequent purchaser, mortgagee, and lienholder purchases, and takes with the same notice and effect as if the copy of the decree were a duly recorded deed, grant or transfer. If you wish for an abstract of judgment to be filed by this office, please send us a check for \$75.00 plus \$10.00 for each additional person that is to be named on the abstract. This fee is required in advance.

**How shall I know exactly when the sheriff will evict my tenant?**

Our office instructs the Sheriff to contact you or your agent as to the date and time that the Sheriff will arrive at the residence. Ordinarily, you will not be contacted by the Sheriff's office until the morning of the eviction. (Note: the Sheriff will not conduct an eviction on weekends or holidays). There is no need for you to contact our office unless the tenant vacates possession prior to actual eviction or unless the tenant attempts to negotiate with you for more time to remain in the premises; however, if the Sheriff does not contact you within 25 days after the lawsuit is filed, call our office immediately.

**What happens when I meet the sheriff at the residence?**

The Sheriff will physically evict the tenant if necessary. You should be prepared to immediately change all the locks at the premises and conduct a walk through to ascertain any damages to the property caused by the tenant. Photographs and accurate documentation are recommended.

**What shall I do with the personal property of the tenant that was left behind?**

After the tenant vacates possession, the law requires you to protect the tenant's property in a place of safekeeping for up to fifteen days after personal delivery upon the tenant of a legal form entitled "Notice of Right to Reclaim Abandoned Property"; however, you must maintain the personal property for up to eighteen days if you send the notice to the tenant by first-class mail. The time period begins to run from the date of personal delivery or mailing. If you do not know of the tenant's new address, simply mail the notice to the former tenancy premises. Upon request, this notice will be provided to you by our office. This notice must also be delivered to any other person you reasonably believe to be the owner of the personal property. The property may be removed to a storage facility of your choice. The property may stay at the residence if it is so extensive as to prohibit removal.

**What if the tenant demands that I return the personal property?**

With the exception of the first two days after the tenant has vacated the real property, AND the personal property still remains at the former tenancy premises, you are not obligated to return the personal property unless and until the tenant pays you for the cost of storing the property. (Note: if the property is so extensive that it must remain at the residence, you may demand the fair rental value of the premises for the number of days the personal property remains there up until the date of disposal or sale (discussed below).

**If the tenant does not claim and pay for the storage costs of the personal property after 15/18 days, what do I do? (For Residential Tenancy)**

If the total value of the property is worth less than \$700.00, you may do anything you wish to the personal property (ie. sell, destroy, etc.). Your appraisal must be reasonable. We suggest that you take photographs of the property prior to disposal or sale in order to validate your own evaluation - Remember the old cliché: "One person's junk may be another person's treasure". If the total value of the property is worth more than \$700.00 you must conduct a sale of the property by public auction. Contact our office for further specific instructions.

**May I sue my tenant for damages to the property that are not covered by the security deposit?**

Absolutely! We recommend that you file suit in small claims court for any damages to the property that are not covered by the security deposit. Upon request we shall schedule an office appointment to discuss pursuit of your claim.

## **ADVISEMENT OF RISKS**

**This section is intended to advise each of our landlord clients regarding the various risks and consequences to which property managers/agents/owners (hereafter described as "client") are exposing themselves by the initiation of an action for unlawful detainer. By filing of an action for unlawful detainer the initiating parties expose themselves to the following potential risks and liabilities:**

1. The LANDLORD may not prevail in the action for Unlawful Detainer, thereby subjecting the LANDLORD to an adverse judgment against the LANDLORD for the tenant court costs and attorneys fees, if applicable.
2. If the TENANT raises retaliatory eviction as a defense and prevails, the LANDLORD may not be able to remove the TENANT from the premises for at least 180 days.
3. The LANDLORD may be subjected to defending breach of contract, intentional and negligent infliction of emotional distress, punitive damages and an action for wrongful eviction. In this event it is understood that the LAW OFFICE does not represent the LANDLORD for landlord clients per the Unlawful Detainer fee schedule but pursuant to its normal hourly rates of \$275 per hour for landlord clients. Also, it will then become necessary to enter into an independent retainer agreement with the LAW OFFICE.

As a CLIENT you are hereby advised to procure liability insurance that contains a duty to defend against affirmative actions by the TENANT if there is any potential for a wrongful eviction or other such claim by the TENANT. ("Wrongful Eviction" is defined to include retaliatory eviction, discriminatory eviction and unfounded or meritless evictions).

**ACCORDINGLY**, it is expressly represented by CLIENT that the following representations made to the law office are true and correct:

1. The eviction action is not being initiated with a retaliatory motive.
2. The eviction is not being initiated with a motive of discrimination on the basis of race, national origin, ancestry, religion, sex, marital status, age, physical hardship, source of income of the tenant, nor upon arbitrary discrimination against the TENANT.
3. THE CLIENT has carefully investigated the grounds for the Unlawful Detainer proceeding and is correct as to the identity of all adult tenants in possession of the premises, the amount of rent specified as due, the circumstances of service of any notice upon the tenant(s), the identity of the owner of the property, and the contents of the notice to quit.
4. The premises is (1) habitable and in compliance with Civil Code Sections 1941.1 and 1942, or (2) the TENANT is responsible for any lack of habitability, or (3) the CLIENT has been prevented by the TENANT from maintaining habitability, or (4) the LANDLORD has no knowledge of lack of habitability. The CLIENT acknowledges familiarity and understanding of the requirements of Civil Code Sections 1941 and 1942 (Copies of these Civil Code sections will be provided to all clients upon request.)
5. All adult tenants named on the Notice to Quit (prepared by the client or at the request of the client) are in possession of the premises.
6. If client is a property manager or agent of the OWNER, he/she has the express authority to enter into the initiation of actions for Unlawful Detainer as well as the authority to represent the OWNER in dealings with the LAW OFFICE.

**THE OWNER, LANDLORD, OR PROPERTY MANAGER AGREE TO HOLD THE LAW OFFICE FREE AND HARMLESS OF ANY AND ALL LIABILITY AND RESPONSIBILITY FOR THE PROSECUTION OF ANY ACTION FOR UNLAWFUL DETAINER, AND AGREE AS OWNER OR ON BEHALF OF THE OWNER TO INDEMNIFY AND DEFEND SAID LAW OFFICE FROM ANY JUDGMENT RENDERED IN FAVOR OF A TENANT AGAINST SAID OFFICE, INCLUDING ATTORNEYS FEES AND COSTS OF SUIT. CLIENT ACKNOWLEDGES THAT PRIOR TO PRESENTATION AND INITIATION OF ANY ACTION FOR UNLAWFUL DETAINER WITH THE LAW OFFICE, HE OR SHE HAS READ AND UNDERSTANDS THE FOREGOING PROVISIONS IN THEIR ENTIRETY.**

**Would you like this office to attempt collection of your money judgment? If so, please contact our office to fill out a form with the following information:**

1. The name of the former tenant that is currently employed.
2. The name, phone number and address of that former tenant's employer.
3. Mail a check to the Law Office to cover filing fees, (\$125.00 for garnishment or bank levy). (Sacramento County)
4. We ask that before you fill out the form and present it to our office with the foregoing information, you previously verify the employment status of the former tenant against whom we have obtained a judgment.

The fee for the service of garnishing wages or a bank levy of the former tenant against whom we have obtained a judgment is "one-third" of any sum collected from the former tenant's employer or amount collected from the former tenant. Upon obtaining money from either source, we will send you the remaining two-thirds less any sums advanced by this office on your behalf.

[www.sacramentolandlord.com](http://www.sacramentolandlord.com)

The Law Office of Gary Link 725 30<sup>th</sup> Street, Suite 107, Sacramento, CA 95816  
Phone (916) 447-8101 Fax (916) 447-4750

Upon your written request, this office will file an Abstract of Judgment with the Sacramento County Recorder's Office. The recording of such an abstract becomes a lien on all non-exempt present or after acquired interests of the judgment debtor (tenant). The practical effect of this is that if your tenant seeks to obtain a loan for the next ten years, the abstract will typically need to be cleared before the lender will loan the money. Our fee for this service is \$75.00 plus \$10.00 for each additional person that is named on the abstract. This fee is required in advance.

The judgment and enforcement thereof is effective for ten. (10) years from the date of the judgment. It may be renewed pursuant to Civil Code Section. 683.010 et seq. upon request.

### **Refund Policy**

We continually make every effort to provide quality and competitive services to the Sacramento landlord community; we trust that this refund policy meets with your approval.

It is the policy of this office that clients pay an initial flat retainer fee in the amount of \$655.00 (Sacramento County) before commencement of the preparation of the legal documents for Unlawful Detainer. The services to be rendered for this fee are set forth in the retainer agreement. We have discovered that over the last 33 years and over 40,000 evictions that occasionally tenants will vacate possession of the premises after the Summons & Complaint have been served upon them. They will apparently vacate voluntarily and most often in the middle of the night. This does not occur often; however, it does occur.

Accordingly, if your tenants ***vacate*** the premises after the Summons and Complaint have been served upon them, but before the writ of possession is issued and delivered to the sheriff AND there is no need to obtain the Sheriff's assistance to have possession of the premises restored to you, you simply need to contact Mr. Link to make arrangements to receive a refund or credit of the amount of **\$125.00**.

In the event that other "extraordinary" services are necessary to be rendered or have already been rendered for the client pursuant to the "retainer agreement", then a refund may not be available.

Note, that we will nevertheless file the appropriate "default" papers against your tenant. This will permit you to obtain a money judgment against your tenant in the future.

Also, although you have been previously instructed to immediately contact Mr. Link whenever contacted by your tenants about settlement and/or resolution of the lawsuit or when you receive money from the tenants, you are also reminded that if the Summons & Complaint have been served upon your tenants, AND the tenants contact you to negotiate settlement or resolution of the lawsuit by the payment of the rent as well as the \$655 (Sacramento County) attorneys fees and costs of suit, AND you wish to settle with your tenants upon those terms, you must immediately contact the law office to notify us that there will be no need to have the Writ of Restitution issued by the court. In this event, no refund will be available, as you are in a position to insist that your tenant restore to you the attorneys fees and costs of suit that you have paid to the law office. Of course, it is your choice to accept less than what would restore you to the monetary "status quo" from the tenant to settle or resolve your case.

## CLARIFICATIONS & DISCLAIMERS

### *(Supplement to Attorney-Client Retainer Agreement)*

In addition to the written *Retainer Agreement* and its incorporated documents, in this “*Clarification & Disclaimers*” I hope to increase your understanding regarding the nature and extent of representation of a “Client” by the Law Office of Gary Link for the handling and prosecution of an eviction action against a tenant.<sup>1</sup> I have made extensive efforts to completely and thoroughly describe many categories of potential litigation and representation that are peripheral to the handling of any eviction action. The law office has the capacity to represent clients and property manager/agents in most of these legal areas. However, please understand that being retained to evict your tenant(s) does **not** include representation in these categories:

Defense of any affirmative lawsuit filed against client or authorized agent  
Defense of a tenant filed cross-complaint  
Defense of County Code Enforcement or Building Inspection claims or charges  
Defense of Department of Fair Employment & Housing claims or charges  
Defense of Human Rights & Fair Housing claims or charges  
Defense of Department of Real Estate claims or charges  
Defense of Internal Revenue Service claims or charges  
Defense of American Disability Act claims or charges  
Defense of Fair Debt Collection Practices Act claims or charges  
Defense of criminal charges, local ordinance violations  
Defense of claims instigated by any governmental agency  
Defense of contempt citations charged against client or authorized agent  
Defense of insurance company claims or prosecution of such claims  
Review of owner or agent vendor contracts  
Review of the client’s claim of property ownership  
Review of a management/employee agreement  
Review of the client’s or authorized agent’s standard business practices  
Collection of money judgments without independent and separate written authorization from client or authorized agent

Personal Injury claims against a current or former tenant  
Property Damage claims against a current or former tenant  
Unlawful Detainer appeals  
Temporary Restraining Orders (prosecution or defense)  
Small Claims Court advice, representation or appeals  
Tax advice or representation  
Sale or exchange of the client’s rental property  
Review and/or advice regarding legal validity of any rental or management form presented by client or authorized agent  
Review and/or advice regarding client or authorized agent business practices  
Legality of the authorized agent’s position or capacity as a property manager  
Safety review of your rental property, apartment complex, or common areas  
Bankruptcy representation  
Notification of judgments to tenant or credit reporting agencies  
Preparation or filing of an abstract of judgment  
Advancing filing fees, court costs, collection costs, expert witness fees, travel fees, court reporters, deposition transcripts  
Renewal of money judgments  
Contract disputes between owner/agent and vendors  
Meeting the Sheriff or physically locking the tenant out, changing the locks, etc.

***If any of the above described services become necessary, a separate and different written retainer agreement must first be entered into between the law office and the client and/or the authorized agent.***

- ✓ It is understood and agreed that there have been and are no representations, agreements, or understandings regarding the scope of law office representation between the owner/property manager/authorized agent and either the attorney or staff other than those contained in the *Retainer Agreement* and its associated, incorporated documents.
- ✓ The law office maintains errors and omissions insurance coverage. Law office is not responsible for the client’s lost rents, tenant or third party damages to the tenancy premises, unpaid utilities, or tenancy premises operating expenses.
- ✓ Law office does not guarantee or warrant the result or outcome of any case. In the event of a judgment or verdict against the owner/landlord, the law office has no duty or responsibility to pay the awarded attorneys fees, costs of suit, or statutory penalties.
- ✓ The law office intends to retain all client files for a period of not less than five years from completion of representation, after which the file will be destroyed. If you wish to have copies of your file we will gladly provide you with duplicate copies for the cost of \$.50 per page, plus an acquisition and administration fee of \$25.00 to obtain the file from the storage shed.

#### **Special Notification to Property Managers/Authorized Agents:**

- (1) The “Client” of the law office is technically the owner/landlord. If at any time your owner/landlord’s expressed desire to the law office (ie. Stipulations/settlement discussions) conflicts with the agent’s expressed desire, the *client’s* choice must be honored by the law office. Legal services are not intended to be for or on behalf of any person or entity other than the identified *client*.
- (2) Payment of attorneys fees and costs of suit by property manager/agents/ for the owner/landlord to the law firm to perform specified legal services on behalf of a *client* does not create an “attorney-client” relationship between the law firm and the property manager/agent; neither shall payment being received from someone other than the client on behalf of the owner/landlord (client) interfere with the attorney-client relationship.
- (3) This law firm and its staff maintains an undivided fiduciary duty of loyalty, confidentiality, competence, candor, communication, and honesty to the *client*. Essentially, without creating a joint venture or independent business relationship, authorized agents for the owner/landlord and the law firm are working together to achieve the maximum result for our mutual client.
- (4) The law office will not handle cases where the client’s or agent’s predominant motive or purpose is to abuse, harass, or annoy the tenant or any other person, to violate anyone’s civil rights, or to violate any statute or law.

---

<sup>1</sup> Through the years I have attempted to keep abreast of new developments in the areas of law for which I represent clients by regularly attending Continuing Education of the Bar seminars. In December, 2000, I attended a seminar whose panelists suggested that to avoid any client confusion regarding the scope of the attorney-client relationship, that each retainer agreement should set forth what services will and will not be provided by a law office for the handling of each matter. This document is one of my efforts to promote client satisfaction and understanding of the nature of our legal relationship. Thank you for taking the time to read all these documents.

# The Law Offices of Rosenberg & Link

(Other Services Provided By The Law Offices)

*“Not just evictions!”*



## **Defense of lawsuits against owners and property managers**

- Wrongful eviction defense
- Housing discrimination defense
- Failure to return all or a portion of the security deposit
- Personal injury claims filed by tenants or former tenants
- Alleged failure to return the former tenant's personal property

## **Prosecution of affirmative civil lawsuits against tenants or former tenants**

- Evictions
- Claims for unpaid rent, common area maintenance charges, utilities, etc.
- Claims for property damages caused by former tenants
- Temporary restraining orders and preliminary injunctions
- Nuisance abatement against offending property owners

## **Prosecution of affirmative civil lawsuits against owners who fail to pay management fees**

## **Prosecution of affirmative civil lawsuits against negligent or contract breaching vendors or managers**

## **Dispute resolution and negotiation**

- Boundary disputes
- Management company v. owner disputes
- Violation of State and local nuisance law disputes
- Insurance coverage disputes with insurance companies when they deny coverage

## **Real estate litigation and disputes**

## **Civil and criminal matters**

- Personal injury cases (auto accidents, hazardous surfaces, slip & fall, mold & mildew, etc)
- Breach of contract
- Administrative law matters
- DUI defense
- Traffic citation defense
- Incorporation
- Business matters
- Collection of money judgments
- Demand letters
- Responses to demand letters



# CLIENT RESPONSIBILITIES DURING REPRESENTATION

By

**Law Office of Gary Link**

It is extremely important that our clients are fully aware of the most predominant complexities of the processing of an eviction matter. Over the course of thirty-three years and over 40,000 eviction cases, we have matured in becoming aware of the most frequent issues that may arise. This document is designed to streamline life for all of us. We hope that you will co-operate with us to arrive at the best result possible for the handling of your case! We thank you for honoring us with the privilege of being able to serve you.

➔ **Please, please read all documentation and paperwork provided that may be presented to you during the processing of your case.** These documents include the following:

Beginning of Case:

- ✓ *Advisements & Instructions To All Clients*
- ✓ *Clarifications & Disclaimers*
- ✓ *Not Just Evictions*
- ✓ *Client Responsibilities During Representation*
- ✓ *Has the Tenant Abandoned? Can I take possession immediately?*
- ✓ *Small Claims Court Advice*

Upon default being entered against your tenant:

- ✓ *Status Report #2 – Important Notice of Default*
- ✓ *Declaration in Support of Default Money Judgment*

If the tenant files an Answer:

- ✓ *What Should You Expect to Happen On The Date Of Trial*
- ✓ *Express Property Management Authorization*
- ✓ *Special Advisement re Inspection*
- ✓ *Notice of Intent to Enter*
- ✓ *Three Day Notice to Quit*
- ✓ *Answer of Tenant*
- ✓ *Notice of Trial*
- ✓ *Map to Carol Miller Justice Center*
- ✓ *Gary's Bonus To You*



At the trial of your case:

- ✓ *We Won, What Now?*
- ✓ *Not Just Evictions*
- ✓ *Questionnaire re collection of money judgment*
- ✓ *We Want You to Win in Small Claims Court*

**We want you to win!**

## CLIENT RESPONSIBILITIES

- ➔ Provide honest, accurate and complete information to our staff regarding the facts of your case
- ➔ Adhere to all client instructions and advisements presented in our paperwork
- ➔ Be on time to all meetings with Mr. Link, our staff, and to court appearances
- ➔ Be fully prepared for all meetings with our office and for all court appearances
- ➔ Immediately notify the law office:
  - ✓ When your tenant has vacated the tenancy premises
  - ✓ If there are any changes of circumstances for you or the tenancy premises
  - ✓ If you and the tenant have spoken about the possibility of settling the legal matter
- ➔ **DO NOT accept any money tendered from the tenant without first having a written agreement prepared by our office**
- ➔ Do not enter into any settlement agreements or bargains with your tenant without first speaking with Mr. Link or the office manager; all post-filing bargains must be in writing – we prepare the written agreement!
- ➔ Bring all original papers and documents regarding each case to every meeting with our staff or the court
- ➔ Be properly attired for all court appearances
- ➔ Maintain the tenancy premises in a habitable condition, not illegally turn off utilities, curtail services, harass or annoy your tenant, threaten your tenant, or invade your tenant's privacy
- ➔ Do not defame the reputation or character of your tenants

# **(Has the tenant abandoned? Can I take possession immediately?)**

**(55-65-75)**

By Gary Link

Gary Link, Attorney, is President of the Law Office of Gary L. Link, Inc. Since 1979, Mr. Link has represented landlord in over 40,000 eviction cases and litigated over 13,000 eviction trials. He is a member of the California Apartment Association, the Rental Housing Association, as well as a member of the local, state, and national bar associations. For questions relating to this article, call the law office at 916-447-8101. The information in this article is applicable as of 2013. Because laws may change please contact the law office to affirm continuing validity of the contents of this article.

Many times, the landlord will not be specifically informed by the tenant that the tenant has "vacated" possession of the rental premises, leaving the landlord in doubt as to whether to enter the unit and recover possession or not. Typically, the tenant will not have transferred possession of the keys to the unit, telephoned the landlord that the tenant has indeed vacated, or sent any type of correspondence to state that the premises has been "abandoned" by the tenant. The landlord is then forced to independently determine whether the most financially feasible and appropriate course is to take possession of the premises (1) through the processing of a lawsuit for Unlawful Detainer, (2) through the service of a Notice of Belief of Abandonment, (3) through taking possession immediately.

The best way that I have been able to explain what decision the landlord should make is by portraying an analogy that I have entitled "55-65-75". The analogy is to driving on the freeway at 55 miles per hour, 65 miles per hour, or 75 miles per hour.

## **55 MPH = UNLAWFUL DETAINER LAWSUIT:**

When driving at 55 miles per hour, it takes longer to arrive at your destination than when driving 65 mph or 75 mph. It is also the safest way to arrive from point "A" to point "B". Statistics have proven that there are fewer traffic accidents when driving at the slower speed, and the risk of receiving a speeding ticket is reduced to a minimum. The analogy to driving 55 mph is to have the tenant evicted through the process of filing a lawsuit for Unlawful Detainer. The lawsuit process will take the longest time of the three alternatives; most typical default evictions in Sacramento will take 40 to 60 days from the time the tenant is served with the lawsuit until the Sheriff finally evicts the tenant. It will also usually be the most expensive process due to typical attorneys fees and court costs of \$655. Nevertheless, although the eviction process is the longest and most expensive approach, it is the surest and safest way to obtain legal possession of the premises with a minimum of risk that the tenant will prevail in a later lawsuit brought by the tenant against the landlord wherein the tenant claims that the premises was prematurely or wrongfully restored to the landlord.

## **65 MPH = SERVING A "NOTICE OF BELIEF OF ABANDONMENT OF REAL PROPERTY:**

The "middle of the road" approach - which is similar to driving 65 miles per hour on the freeway - to determining whether to take possession of the premises without the necessity of filing of a lawsuit, may be exercised when there have been at least 14 days of consecutively unpaid rent, AND the landlord has formed a "reasonable" belief that the tenant has abandoned the premises. As with driving a little slower than 75 mph, *yet* faster than the legal speed limit (thereby increasing the risk of a traffic accident or receiving a speeding ticket), this method will take at least 18 days of the notice, and will expose the landlord to a moderate risk of liability in the event the landlord is determined by a judge or a jury that there was a failure to properly assess the evidence as to whether a reasonable landlord would have formed a "reasonable" belief of abandonment before mailing the "Notice of Belief of Abandonment" to the tenant. Of course, the central issue for determination is to assess what specific facts exist that could cause the landlord to have a preliminary "reasonable" belief of abandonment of the premises. The most common facts that a landlord should look for are:

1. Has the electricity and/or gas been turned off?
2. Are papers being delivered at the premises without being removed from the porch?
3. Has the mail carrier informed the landlord or neighbors that there has been a change of address filed by the tenant?
4. Have the neighbors been consulted to inform the landlord that the tenants were seen removing their belongings from the premises?
5. Have the tenants stated to the landlord or others that they were living elsewhere or that they were no longer living at the premises?
6. After conducting an inspection of the premises pursuant to a lawfully served "Notice of Intent to Enter", was it discovered that:
  - (a) all of the furniture was removed from the premises,
  - (b) there were no toiletries, linens, dishware at the premises,
  - (c) there was no food in the refrigerator or in the cupboards,
  - (d) the telephone has been disconnected,
  - (e) there is only trash and garbage scattered through out the unit.

The mere fact that the landlord knows that the tenant left personal property on the premises does not, of itself, justify a finding that the tenant has "abandoned" the premises. Unfortunately, a landlord will not usually have the convenience or comfort of having all of the above factors in existence; thus it is recommended that the landlord then serve a "Notice of Belief of Abandonment" by mailing this written notice by first class mail to the tenant's address, or by personally handing it to the tenant. The landlord will then need to wait 18 days without receiving a legally appropriate response from the tenant before the landlord may deem the premises *formally* "abandoned" and take possession of the premises. If the tenant wishes to avoid having the landlord recover possession of the premises in this fashion, within the 18 day period from the date of the mailing of the notice (not counting the day of mailing) the tenant must make sure that the landlord actually receives a written notice from the tenant stating that the tenant (1) does not intend to abandon the real property, and (2) provide an address at which the tenant may be served by certified mail with an action for Unlawful Detainer.

Obviously, because of the great latitude in interpretation of whether the landlord initially was correct in forming a "reasonable" belief of abandonment of the premises based upon the many factors set forth above, this method is described as the "middle of the road" approach. In the appropriate factual circumstances, the service of the "Notice of Belief of Abandonment of Real Property" may also be served at the same time as a "Three Day Notice to Pay Rent or Quit", a "Three day Notice to Perform Covenant or Quit", or even during the processing of the lawsuit for Unlawful Detainer. A "Notice of Belief of Abandonment of Real Property" may be obtained from my office.

## **75 MPH = TAKING POSSESSION RIGHT NOW:**

As with driving on the freeway at 75 mph and risking increased exposure to traffic accidents and speeding tickets, this method exposes the landlord to a higher risk of being sued by the tenant for prematurely and allegedly wrongfully recovering possession of the premises without the tenant's permission. When the landlord utilizes this approach, and has not exercised the right to judicial intervention with a lawsuit for Unlawful Detainer of the proper service of the "Notice of Belief of Abandonment of Real Property", the landlord must be thoroughly certain - and even this may not be enough that the tenant has indeed "abandoned" the premises.

Frankly, this approach should not be utilized without first speaking with an attorney who is knowledgeable in landlord-tenant matters, with whom you will assess the risks of being sued by the particular tenant with whom the landlord is dealing. To those readers who are already in the process of a lawsuit for Unlawful Detainer, in the absence of unusually extreme circumstances, it is *generally* recommended that you allow the lawsuit to run its course, and await the Sheriff's lock out, rather than taking possession immediately.



# The Law Offices of Gary Link

## (Small Claims Court Advice)



**SMALL CLAIMS COURT JURISDICTION IS UP TO \$10,000**  
(Effective 1-1-12)

Attorney Consultation to be prepared for your day in court includes:

- Review by an attorney of facts/documents to evaluate the merits/defenses of your case
- Basic pretrial preparation of your case, e.g., whom to sue, what to sue for, etc.
- Identification of necessary witnesses/anticipated testimony
- Identification of documents that should be presented at trial
- Order of presentation of evidence at trial
- Courtroom demeanor – strategy/tactics
- Your appeal rights/trial de novo
- Settlement/mediation alternatives
- Collection of money judgment/avoidance of collection of money judgment

Other services available for an additional cost

- Court Forms
- Preparation of legal documents
- Service of your legal documents
- Filing of papers at small claims court
- Legal research
- Demand letters/response letters
- Collection of money judgment
- Attorney representation at trial de novo (appeal)

Whether you are suing, being sued, or simply anticipate that you will become a party to a small claims court lawsuit, you should immediately seek the advice of an attorney. Mr. Link has been a full-time practicing litigation attorney in Sacramento since 1979. He has sat for many years as a Small Claims Court Judge Pro Tem for the Sacramento County Superior Court.

An attorney consultation for small claims court advice is only \$200 per hour by appointment only.

**We are here to help you.**  
**Call (916) 447-8101 for an appointment today.**

Law Office of Gary Link  
725 30<sup>th</sup> Street, Suite 107, Sacramento, CA 95816  
[www.sacramentolandlord.com](http://www.sacramentolandlord.com)

(916) 447-8101 Fax: (916) 447-4750 Email: [teamlink@pacbell.net](mailto:teamlink@pacbell.net)

As required by California Rules of Professional Conduct – Rule 1-400, the information contained herein does not constitute a guarantee, warranty or prediction regarding the outcome of your legal matter.