

Do You Need to Evict a Tenant?

HOW TO:

- This handout provides information on how to file an Unlawful Detainer action to evict a tenant after serving either a 3-day, 30-day, or 60-day Notice.

WHEN TO USE:

- This procedure can be used if you have served either a 3-Day, 30-Day, or 60-day Notice on the Tenant, **and the time has already passed.**

PLEASE NOTE: If you think other adults (other than those on the lease) are living in the property then you have the option of serving an extra copy of the *Summons* and the *Complaint* on them using a form called the ***Prejudgment Claim of Right to Possession*** (form #CP10.5). If you do not do that, these people can file a *Claim of Right to Possession* (form #CP10) to try and stay in your property.

*Self Service Center
Superior Court, County of Santa Clara
99 Notre Dame Avenue, San Jose, CA 95113
408-882-2900 x-2926*

www.sccselfservice.org
Santa Clara County
Self-Help Website

www.sccsuperiorcourt.org
Santa Clara County
General Website

www.courtinfo.ca.gov/selfhelp
State of California
Self-Help Website

Instructions

A. Fill out the attached blank forms (type or print neatly using blue or black ink) using the attached sample forms as a guide:

- **Civil Case Coversheet** (form # CM-010)
- **Summons** (form # SUM -100)
- **Complaint-Unlawful Detainer** (form # 982.1(90))
- **Proof of Service** (form # POS -010)

B. How to Process Your Papers – Follow these easy steps:

1. Make **2** copies of the Civil Case Cover Sheet. Make 1 copy of the complaint for you and one for each defendant. Make one copy of the summons for you and **2** for each defendant.

2. Bring the originals and the copies to the clerk's office located at 191 North First Street, San Jose, CA 95113 or the clerk's office located at 12425 Monterey Rd., San Martin, CA 95046 (if your property is located in Gilroy, San Martin or Morgan Hill).

a. If you are suing for \$10,000 dollars or less, your filing fee will be \$159.30, between \$10,000 and \$25,000 the fee is \$306.50 and if you are suing for more than \$25,000, your filing fee will be \$299.50.

b. ***If your income is low and you want to ask to not pay the filing fee***, fill out and turn in an **Application for Waiver of Court Fees and Costs** packet (#982 (a)(17) and 982(a)(18)). You can get this packet from the Clerk's office or the Self-Service Center. Sample fee waiver forms are also available at the Self-Service Center. Turn your fee waiver request into the clerk's office along with your forms. Your fee waiver request will be forwarded to a judge who will decide if you qualify. If you do not qualify, you will have to pay the court fees within 10 days or your paperwork will be invalid.

C. Serving the Papers:

1. What papers you serve:

a. You need to serve the other party:

- a copy of the summons (**without the court's seal**)
- a *filed* copy of the complaint

2. Who can serve the paperwork:

- a. **You CANNOT serve the papers yourself!!**

You can hire a professional process server, or have any person 18 or over who is not involved with the case serve the paperwork for you. For purposes of this information sheet, the person you choose to serve the paperwork will be called the "server."

3. How does the server serve the paperwork?:

a. **Personal Service** - The **best** way to serve your paperwork is through personal service. This means that your server finds each tenant (at home, work or play) and asks "Are you so-and-so?" If the person is the defendant, the server hands the papers to the tenant and says "You are being sued." Then the server simply leaves. The tenant **does not** need to sign anything to say they got your paperwork.

b. **Substitute Service** - The server may also serve the tenant through "**Substitute Service.**" This type of service is appropriate only when the person who is serving the papers is not able to find and serve the defendant named on the Summons after **three** attempts. There are two types of substitute service:

- "Home substitute service" - The server can **personally** give the paperwork to a person 18 or over who lives at the same address as the tenant, who is told what the papers are about, and (2) **mail a copy** of all of the paperwork to the tenant at the same address. **OR**
- "Business substitute service" - The server can **personally** give the paperwork to the person in charge at the tenant's business address, and (2) mail a copy of all of the paperwork to the tenant at the same address.
- If your server uses substituted service, they will have to attach a declaration detailing their attempts to find the tenant to the summons form.

c. **Posting and Mailing Service** – This type of service is the least recommended type of service. However, it is your last resort if you cannot find your tenant or do a substituted service. Before you can do posting and mailing service, you must prove to a judge that you have made three **reasonable** unsuccessful attempts to serve the tenant. You must then get an order from the judge saying that you may post and mail. For more information about this option, please see a Self-Service Center attorney.

Note: for both substitute service and service by posting and mailing, the tenant has 10 additional days to respond to the complaint (15 days total).

4. After Serving the Papers

- a. The **server** will fill out the bottom of the front of the Summons form and the POS-010. Then you file this completed Summons and Proof of Service with the clerk at your courthouse.

D. After the tenant is served:

1. The tenant has five calendar days after service (or 15 if served by substitute service or by posting and mailing) to file an Answer with the Court. If the fifth day falls on a Saturday or Sunday, the tenant has all day Monday to file an Answer. Also, if the fifth day is a Court Holiday, the tenant has all of the following day to file an Answer.

2. **If the Tenant files an Answer** and you want the tenant out as soon as possible, you must fill out and file the local Santa Clara County At-Issue Memorandum (form FM-1012 that is available at the Superior Court website) to have the case set for trial. Have a copy of the At-Issue Memorandum served to the Tenant by mail, and have the server fill out a Proof of Service by Mail. Then file the forms at the same court.

The trial should be set no more than 20 days after you file the At-Issue Memorandum.

There are many other options and motions that can be filed in the unlawful detainer actions, including discovery. If you have questions you may want to talk to a private attorney or use the legal books about landlord/tenant law available at the Santa Clara County Self-Service Center and the Santa Clara County Law Library.

Resources:

- Self-Service Center, Superior Court, County of Santa Clara, 99 Notre Dame Avenue, San Jose, CA, 408-882-2900 x-2926. Walk-in help is available on a first-come, first-served basis on M-Th from 8:30 am to 4 pm, although customers arrive well before 8 am to get a place in line. The Center may be full if you come after 8 am.
- Local info: www.sccselfservice.org/civil, www.sccsuperiorcourt.org, www.scccaseinfo.org
- Santa Clara County Bar Association Lawyer Referral and Modest Means Panel at 408-971-6822 (www.sccba.com) – For a \$30/30-minute consultation with an attorney and representation in Court for a price based on your income.
- The California Landlord’s Law Book by Nolo Press
- Landlord-Tenant, California Practice Guide, The Rutter Group
- California Landlord-Tenant Practice, CEB
- Free legal forms (they’re fillable online) www.courtinfo.ca.gov/forms
- www.dca.ca.gov
- California Code (“The Law”) www.leginfo.ca.gov
 - click “California Law”, Select the code you are interested in (ex. “Civil Procedure”), Click “search”
- California Rules of Court → www.courtinfo.ca.gov/rules/