

BASIC TIME LINE FOR UNLAWFUL DETAINER ACTION (Eviction):
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(Many events could alter this....but it is the usual course of an eviction.)

NOTICE: Either a **3-Day Notice** (For non-payment of rent or performance of covenant) or **30-Day Notice of Termination of Tenancy** (90 Day Notice if a Section 8 Tenant). These must be signed by the owner of the property and served either personally, substitute service, or by posting on property (the last 2 also require a mailed copy). California Civil Code Sections 1161 et seq. and 1162, et seq.

END OF NOTICE PERIOD: **3-8 days (depending on how/when served)**
3-Day - If tenant has not paid or moved at the end of the 3 day period. (Timing - Notice period is calculated by starting counting the *next* day after service. If personally served, notice period expires at the end of the third day, if substitute or posted and mailed, on the eighth day after service. Note: Landlord does **not** have to accept rent after this period expires and may continue with a suit for eviction. Up to the end of that period, the landlord **must** accept full rent if it is timely tendered.

NOTE: If the Landlord accepts ANY rent after the end of the Notice period, he may not file suit on that Notice. He or she must then re-serve a new Notice for any shortages or delinquencies.

FILING SUIT: You may file suit on the next court day after the Notice Period expires.

SERVICE OF SUMMONS/COMPLAINT:

The tenants must then be served by anyone over the age of 18 who is not a party to the action. A professional process server is preferable.

Again, service can be: (1) personal, (2) substitute (on someone over the age of 18 at the premises only after at least 3 attempts are made to personally serve), or (3) posting (this requires a Court order showing that tenant was evading service of process.)

The service process can take anywhere from 1-20 days.

If the tenant is served by posting (after obtaining a Court order), then the tenant is deemed served after the 10th day

END OF LEGAL PERIOD:

At the end of the Service period, the tenant has **5 court days** to answer the complaint.

If the tenant does not answer within 5 court days (if the 5th day falls on a week-end or holiday, tenant will have until close of court on the following court day to file answer), then the landlord may file for a **default judgment**.

If the tenant answers the complaint, then the landlord must file a **Memorandum To Set Case For Trial.**, asking for trial date. (CCP Section 1179(a) permits unlawful Detainer matters to be heard within 20 days of filing of Memo to Set). Tenant will have 5 days to file a Counter-Memo.

TRIAL: By law, landlords are permitted trial preference. Unlawful detainer matters are permitted

a trial within 20 days of filing a Memo to Set. (CCP Section 1179(a).)

If the tenant vacates the premises before the trial date (i.e. possession is no longer at issue) -- the Landlord then loses trial preference and it converts to a breach of contract action. BUT if the tenant has not given up the keys (the symbol of possession), then possession is still at issue and the Landlord may proceed on the preferential date.

TENANT MANEUVERS:

If a tenant wishes to stretch the period or fight the eviction -- he may do any of the following:

Motion to Quash Service of Summons and Complaint: Must be filed **within 5 days** of service of summons/complaint. This is a legal Motion that attempts to dispose of the complaint by virtue of illegal service or defect in the complaint/summons. If granted, Landlord will have to re-serve the complaint (go back to the same time as filing of the complaint) or serve an amended complaint.

- Hearing is from **3-7 days** after Motion/Notice filed.

- If tenant loses -- will have to file/serve and answer within **5 days**.

Motion to Strike: Must be filed **within 5 days** of service of summons/complaint. This is a legal Motion that attempts to strike one or all of the allegations in the Complaint (as irrelevant, false or improper). If all the allegations are stricken, the complaint is dead in the water and the Landlord starts over (with Notices.)

- Hearing is **15-20 days** after service of motion (depending on whether served personally or my mail.)

- If Tenant loses -- will have **5-10 days to file answer** (depending on whether notice of ruling is served personally or by mail.)

Demurrer: Must be filed **within 5 days** of service. This is a legal Motion that attempts to dispose of the suit by stating that the Complaint is defective on its face. If granted by the Court, and cannot be amended, this Motion is fatal and the Landlord will have to start over (go back to Notices).

- Hearing is **15-20 days** after service of motion (depending on whether served personally or my mail.)

- Even if Tenant's Motion is Successful, sometimes the court will permit the Landlord to amend the complaint to correct the defect and then re-serve the amended summons/complaint, Tenant will then have **5 days to file and answer**.

- If Tenant loses -- will have **5-10 days to file answer** (depending on whether notice of ruling is served personally or by mail.)

Jury Trial Demand: A Tenant may demand a jury trial to make the case more expensive to prosecute for Landlord, or because they believe a jury will find in their favor. It may stretch out the proceedings a day or two, but does not change the basic time-line. NOTE: If there is a demand for a jury trial, the Court will usually order a settlement conference before the date of trial.

If none of the above happen -- both parties appear in Court to plead their argument. The Landlord has the burden to show the breach and damages. The Tenant has to show affirmative defenses that counter the complaint.

JUDGEMENT/POST JUDGMENT:

If the Landlord is successful at trial, He/she will then have a judgment for possession and money damages. We will consider them separately. **A judgment is only a hunting license** -- it only entitles the Landlord to proceed for possession (and money)-- the Landlord may **not** just go and "throw the tenant out" himself or change the locks.

Warning: Sometimes the Judge will grant a **stay of execution** on the judgment which can prevent the Landlord from actually moving on the judgment for the period of time determined by the judge. This is often done in jurisdictions where housing is scarce and/or small children are involved. The judge may order a **stay of one week to several months**, depending on the situation.

In any unlawful detainer the real "prize" is possession of the property -- that is always the first thing to go for.

To regain **possession** of the property the Landlord must:

(1) File the Judgment (if not already done so by the Court clerk), (2) get a Writ of Possession issued, and (3) Prepare Sheriff's orders. It should hopefully only take one trip to the clerk's office to file the judgment and get the writ of possession issued by the Court. You then have to take the writ(s) and instructions to the Sheriff of the County, pay a fee, and have them post the property (usually **within several days to a week** of you paying them to do so.) After the **5 day posting period**, the Sheriff will then come and physically remove the tenants and permit the Landlord to change the locks and take legal possession.

To collect the **money judgment**, the Landlord must: (1) File the judgment, (2) have a Writ of Execution issued by Court on that judgment, and (3) find some source of money to collect.

More often than not, if someone is evicted for non-payment of rent, the only way you will get that money is if they willingly pay you to clear their credit. As the old saying goes, "you can't get water out of a stone." Recording an **Abstract of Judgment** puts the Landlord in the position of being a creditor of record if the tenant ever comes into money and also affects the credit record of the tenant. I always recommend recording an Abstract if there is any hope of a financial recovery.

IF A DEFAULT JUDGMENT:

A default judgment (where the tenant never bothers to answer the complaint) is divided into **two phases**: possession and money damages, and are obtained as follows:

Possession:

(1) Filing the Proofs of Service (of the Summons/Complaint) with the Court, (2) Filing a Request for Entry of Default and Clerk's Judgment (for Possession only), a Judgment (for possession only), Writ of Possession, and Sheriff's instructions (as discussed above).

Money Damages:

Once the Sheriff has evicted the tenant and you have received the return on that Sheriff's eviction, then you may:

(1) Hope they have some assets, (2) file Amended Request for Entry of Default, (3) file Judgment, (4) File Declaration in Support of Plaintiff's Application for Entry of Money Judgment. When judgment

granted by the Court *then*: (5) have a Writ of Execution issued by Court, and (6) again, hope they have some assets and/or find some source of money to collect. Again, I recommend recording an Abstract.