

Eviction & Debt Collection

A Landlord's Guide





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The tenant eviction..... a potentially time consuming, expensive and frustrating experience. Tenants are becoming more sophisticated in maneuvering the legal system to their advantage. With all of the technicalities, it often seems that our rights as property owners are ignored. Yet, the unlawful detainer procedure remains the only legal way to remove the tenant who refuses to vacate the Premises.

We are The Durringer Law Group, the leader in evicting tenants. Our time proven methods cut through the red tape and result in your tenants being evicted as fast as the law allows. Our attorneys and staff have successfully completed over 245,000 evictions and have collected over \$155,000,000 in debt since 1988. Because we are a highly specialized law firm, representing landlords exclusively, we have developed the special expertise necessary to succeed in this highly complex legal area. Our professional and experienced staff is dedicated to providing the absolute highest level of service possible.

Because of our efficient and effective methods, we are able to handle your residential eviction for just \$150.00 in attorney's fees plus costs in most uncontested residential cases. Commercial evictions are slightly higher, see our website at www.DurringerLaw.com or call for details. We more than earn our fee by saving you precious time in removing your unwanted nonpaying tenants as fast as the law allows.

This booklet was prepared as a step-by-step guide through California's unlawful detainer procedure. It has been designed for those of you seeking general information about the eviction procedure, and for our clients who are currently going through one. As always, feel free to contact The Durringer Law Group if you have any questions. One of our attorneys will be happy to talk to you about any landlord-tenant matter.

There are four major steps in the tenant eviction process. Step one, the notice, occurs before formal court procedures are started. This step is the foundation of the entire case, and must be completed without error. Steps two through four are completed directly with the court. In processing your eviction, our office will complete each step as fast as the law allows.

No one, absolutely no one, processes unlawful detainer actions faster than the Durringer Law Group, PLC.

Included in this guide, is “The Eviction Fast Track Time Chart,” summarizing the unlawful detainer process, with estimated time tables for the typical uncontested and contested unlawful detainer actions.

STEP ONE: The Notice

This is the beginning of your case. You begin by serving your tenants with the appropriate written notice. It is important that you use the proper form and ensure that the form is current. The notice must be filled out completely and then must be served correctly. There are several possible notices which may be served upon your tenants. The three most common are:

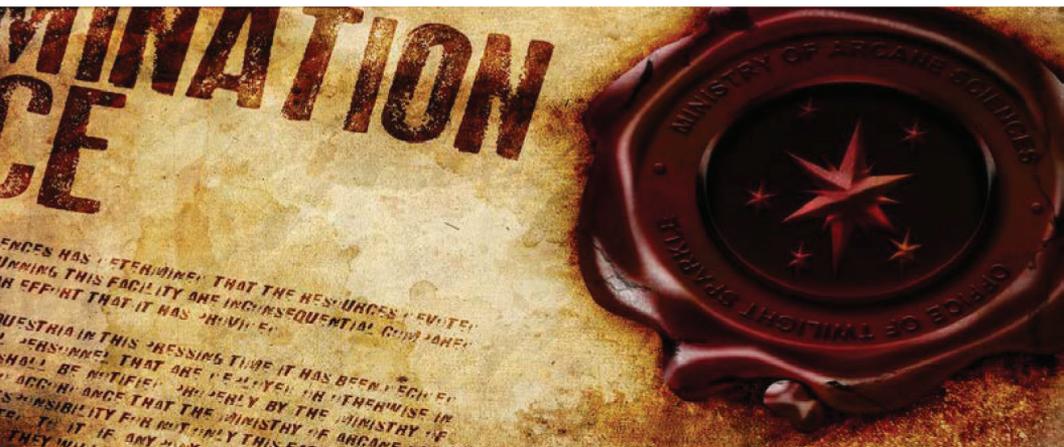
-  Three Day Notice to Pay Rent or Quit
-  Notice of Termination of Tenancy
-  Three Day Notice to Perform Condition or Covenant or Quit

Three Day Notice to Pay Rent Or Quit

This notice is used when the tenant is in violation of the rental agreement by failing to pay the full rent when due. All adults currently living in the Premises should be named on the notice. The address must be complete and correct. The rent demanded must be exact, as any overstatement in the amount due will make the notice invalid. Do not include late charges, or NSF charges. As the name implies, rent and only rent is to be included. Ensure that the Three Day Notice to Pay Rent or Quit complies with the current legal requirements. Your notice must include the name, address and phone number of the person to be paid and the usual days and hours that payment may be made. The address you include should be a physical address. Caution: Do not use a P.O. Box as the address for payment on the notice, as it provides defenses to the tenant.

Notice of Termination of Tenancy

A Thirty Day Notice to Terminate Tenancy is used to terminate a month-to-month tenancy, provided at least one occupant has resided in the rental unit for less than one year. A Sixty Day Notice is required to terminate month-to-month tenancies if all of the occupants have resided in the rental unit for one year or more. No reason need be given to the tenant for service of this notice. It may be served at any time during the month, and expires thirty or sixty days following service. There is an exception for single family residences and condos when the property is sold, is in escrow, and the purchaser is a natural person who intends to live in the property for one year following close of escrow. In that event, a thirty day notice will suffice. Ensure that you use a current industry standard form. The laws change frequently! A recent change requires certain statutory language regarding the tenant's right to reclaim abandoned personal property after they vacate must be included on the notice. Further, you must advise your tenant of their right to a pre-move out inspection at or near the time of service of the notice. Be sure that you do not accept rent from the tenant for any time period beyond the termination date. In situations where the resident is engaged in criminal behavior on the Premises, damaging or destructive behavior, or has harmed or threatened to harm others, a Three Day Notice of Termination based on illegal activity, waste or nuisance may be available. Consult your attorney to see if the facts warrant use of such a notice. Note that some local jurisdictions with rent or eviction control ordinances may impose additional requirements or restrictions on the use of a thirty day or a sixty day notice to terminate tenancy, consult your attorney to ensure that you comply with your individual jurisdictional requirements.



Three Day Notice to Perform Condition or Covenant or Quit

This notice is used when your tenant has committed a curable material violation of the rental agreement other than non-payment of rent. The most common uses are when a tenant fails to pay late charges or NSF fees, violates a no pet clause, or when the tenant sublets to another person without your consent. Use this notice appropriately, as you may be required to provide evidence of these violations in court. For example, you may need evidence that establishes that the tenants failed to remove an unauthorized pet or unauthorized occupant within the notice period.

Service of the Notice

Once you have determined which notice is appropriate, you must serve the tenant with a copy of the completed notice. Note that you should, but are not required to keep the original notice and serve copies on your tenants. Service of the notice may be accomplished in one of three methods:

✚ Personally. The tenant is handed a copy of the notice. This is the best and most effective manner of service, it is known as Personal Service.

✚ Substitute Service. Service by substitution is complete when a person of suitable age and discretion is given a copy of the notice at the residence and an additional copy is sent to the tenant's home address via regular first class mail. Suitable age and discretion means the recipient must be old enough and lucid enough to understand what the notice is and what to do with it. A bright fourteen year old kid is generally of suitable age and discretion, but an eighty year old adult with dementia is not.

✚ Post and Mail. This method is the least desirable but the most common type of service. A copy of the notice is posted, i.e. taped or tacked, to the main entry door and another copy is mailed via regular first class mail to the residence address.

Computing the time period set forth in the notice is critical. For example, if a three day notice is served on Monday, the three days would be Tuesday, Wednesday, and Thursday. The notice expires on Thursday at midnight; the tenant has through Thursday at midnight to pay the full amount or vacate the Premises. Note that the day the notice is served is excluded when counting the days. When the

notice period ends on a weekend or holiday, the tenant has through the next business day to comply. For example, a notice served on Wednesday, Thursday or Friday, will expire the following Monday at midnight. If that Monday is a court holiday, then the notice will be extended through the next business day.

Notice of Belief of Abandonment of Real Property

Sometimes it is hard to tell if the tenant has abandoned the Premises, which makes it difficult for the landlord to know whether or not he can lawfully take possession of the Premises. In these instances the Notice of Belief of Abandonment of real property is appropriate. Before it can be used, two requirements must be met: 1) the rent is at least fourteen days overdue, and 2) you believe that the property has been abandoned. If these two requirements are met, you should fill out and serve a notice of belief of abandonment. Note that eighteen days must elapse before expiration of the notice. Serve the notice by posting a copy on the door, and mailing a copy, via regular first class mail, to all last known addresses. If the tenant wants to remain in the property, he must reply in writing within eighteen days by indicating that he has not abandoned the property, and he must provide an address where he can be served with the summons and complaint for the unlawful detainer. The abandonment notice can sometimes be used as an alternative, or in addition to the eviction procedure. It does not affect the three day notice to pay rent or quit. In certain situations, our office will do both an abandonment notice and an unlawful detainer, having the two run simultaneously. Possession is restored on the first one to terminate.

STEP TWO: Filing and Serving the Summons and Complaint

We now take the tenant to court. After the notice expires and the tenant fails to comply, an unlawful detainer action is brought against the tenant. The summons is a document informing the tenant/defendant that he or she has been sued. The complaint contains the necessary allegations that the law requires to entitle the landlord to regain legal possession of the Premises. After the summons and complaint are prepared in our office, they are either e-filed, fax filed or our registered process servers rush the documents to the court that same day. After the summons and complaint are filed with the court, the tenant/defendant is served with the lawsuit.

This is a major step in the eviction process. California law requires that a sheriff, marshal, registered process server, or other disinterested third party serve the summons and complaint on the tenant. Tenants, aware that the rent is unpaid, will often try to evade the process server to delay the eviction. Our registered process servers do everything the law allows to serve the tenants on the first day possible. The vast majority of tenants are served within the first couple of days. On rare occasions, a tenant may seem to just “disappear.” On those rare occasions, we are required to petition the court for an “order to post and mail” the summons and complaint. The court must be satisfied that our process server has been diligent in attempting personal service. Most courts require a showing of attempted service on three different days and at different times. Once the court is satisfied that our process server has been diligent, the judge will sign the order to post. In these rare instances, your tenant will have fifteen days, (instead of the regular five) to respond to the unlawful detainer. Similarly, the tenant who has been served by substitute service has ten additional days to respond to the summons. Thus in both order to post and substitute service cases, the period of time is extended by ten days. Any information you may have regarding the tenant’s place of employment, type of car, or habits will assist in our serving your tenant quickly.

Because we process many unlawful detainers, we are able to maintain numerous process servers, each registered with the State of California. This provides us with direct control over the entire unlawful detainer action and ensures that the tenant is served as fast as possible, generally within twenty four hours of filing the complaint.



STEP THREE: Obtaining the Judgment

The Uncontested Case

About 50% of the cases that we handle throughout California are Uncontested, meaning the tenant does not respond to or challenge the complaint, and takes no action to delay or hinder the eviction process. After the time period for the response has expired we will apply to the court for a default judgment. In an Uncontested matter, no court appearance by you or your property manager is required.

The Contested Case

The other 50% of our cases are some variation of a Contested Case. In a Contested Case, the tenant will file a response to the unlawful detainer. A response can be a motion, a demurrer, or an answer. There is literally nothing a tenant can file with the court that we have not seen before.

Once an answer is filed with the court, we immediately set the matter for court trial. Unlawful detainers are entitled to preference on the court's calendar, and are usually set for trial within twelve to twenty days after the answer is filed. Throughout the entire process, our office is completing all steps, as fast as the law will allow.

When the trial date is set we will notify you. We will discuss the case with you shortly before the trial. Either you or your property manager will need to be present at the trial to testify. After trial, the court enters judgment for rent, holdover damages, costs and attorney's fees if your rental agreement provides.

Most Contested Cases require just one court appearance for a bench trial. Most court appearances are relatively short, rarely lasting over an hour or two.

Not all cases are clean and simple. A small minority of cases, one or two per cent, are aggressively contested by tenants. These tenants and their legal representatives are filing more and more complex motions and engaging in strategies to delay and frustrate the eviction process. Often, free legal assistance is available to tenants, and cases become unnecessarily complex. Jury trials, extensive discovery and other tenant delay tactics are common in Los Angeles, San Diego and certain other counties.

There is nothing a tenant or his attorney can file or process that our office has not seen and successfully dealt with before. The usual cast of characters, i.e. Legal Aid, Eviction Defense, the tenant lawyers that typically represent defendant tenants are very familiar with our firm and know that we aggressively represent our clients' interests. They are well aware that neither we nor our clients are bullied by the games that other not so experienced firms fear.

Once the judgment is entered, either by default or after trial, the final step, the lock-out occurs.

STEP FOUR: The Lockout

The eviction process concludes with the issuance and enforcement of a writ of possession of the Premises. The writ is an order from the court to the county sheriff, giving him the power and duty to carry out the judgment. A sheriff drives to the Premises and posts a five day notice to vacate the Premises. This is the final five days that the tenant has to move out. On or about the sixth day, the sheriff will meet you or your agent at the Premises at a designated time. You will then receive a receipt for possession of the Premises - the Premises are now yours! If the tenant is still inside when the sheriff arrives, the tenant will be physically removed from the Premises.

The Aftermath

If the tenant leaves some or all of his personal property behind you must allow him 15 days to claim the property if the sheriff does the lock out. If the tenant moves out prior to being posted with the writ of possession, you must mail a Notice of Abandonment of Personal Property to the tenant's last known address and allow the tenant eighteen days to claim the property. The property must be kept in a reasonably safe place, but does not have to be stored in the leased Premises. For residential properties, if the property left behind is worth less than \$700 you may dispose of it after the above period. However, if it exceeds \$700 in fair market value, you must sell the property through a public sale, but only after duly publishing the date and time of sale in a newspaper of general circulation once a week for two consecutive weeks. If the tenant returns to claim the property, you must return it to him, but you can charge reasonable storage fees and costs incurred. You may not hold the property as ransom for rent, even if you have a judgment. It is always a good idea to take pictures of the personal property and write down a complete inventory of the items. For commercial properties, the

dollar value of the abandoned personal property differs. In the event a commercial tenant abandons property, you may dispose of it as stated above, but use the criteria \$1.00 per square foot of leased space, or \$750.00 whichever is greater, as the threshold.

Security Deposit

If you have received a security deposit from the tenant, you are required to mail a statement of the disposition of the deposit to the last known address within twenty-one days after you receive possession of the Premises. Even though the tenant owes you money, you still must account for the deposit. Deduct damages over and above ordinary wear and tear, cleaning expenses, rent and other sums due under the rental agreement. You must enclose receipts for repairs or cleaning if the aggregate total charged for cleaning and repairs is greater than \$125.00. The receipts must include the name, address and telephone number of the vendor. Remember, you are not refunding any money necessarily; you are merely letting the tenant know how the security deposit was applied.

Obtaining the Money Judgment

In the contested case, the court enters judgment at trial. In the uncontested case, the money judgment is entered after the lockout is complete and you have regained possession of the Premises. If the tenant “skips,” returning possession without the need for an eviction, you may secure a judgment through the small claims court.

Obtaining a money judgment is a powerful tool for recovering your loss. Approximately 75% of all judgment debtors pay at least part of the judgment. The judgment, if your lease provides and if done properly, allows you to add your post judgment legal costs to the balance and accrues interest on the judgment amount at the rate of 10% per year. It is enforceable for 10 years and can be renewed every 10 years, forever.

Collecting the Debt

After the tenant has been evicted, and you have authorized us to obtain a money judgment for the back rent, attorney’s fees, and court costs, we can pursue the money rightfully due you. We maintain our own in-house collection department and aggressively pursue the judgment debtor until you are paid in full. There is no additional charge for collection unless and until we recover from your ex-

tenant. Our office is routinely retained by other law firms and attorneys to collect their toughest cases. Our experience and success is unmatched, we collect when others cannot.

Locating the Debtor

Once the judgment is obtained, locating the debtor and/or his assets becomes the greatest concern. Typically, the debtor disappears. Not surprisingly, many debtors try to hide from their creditors. The rental application is very important in providing clues to our skilled skip tracers in tracking down the tenant. Even seemingly minor details such as cell phone numbers, email addresses, vehicle license plate numbers, a physical description or the debtors' habits, are useful in finding their new home or place of employment. Former neighbors and other personal contacts of the debtors can also provide valuable leads in locating the tenant.

As an integral part of our law firm, the collection department has resources that are not available to a collection agency. Privileged, comprehensive national databases are used to track the errant debtor. We fully exercise the legal power to subpoena information from otherwise private sources. In some cases, debtors go underground and do not surface for years. They can run but they cannot hide! We don't stop until the debtor is found, in this state or another. We have successfully recovered assets and collected judgments from debtors that transferred all of their assets out of the United States! We have enforced judgments and have collected monies from Canada and the European Union, all from right here in California.

Communicating With the Debtor

When we locate the debtor, we will often contact him or her to request payment of the debt voluntarily without incurring more legal costs (which would be added to their debt). In most cases we have handled their eviction, so they are familiar with us. Since we have reported our collection efforts on their case to the credit reporting agencies, they are motivated to cooperate with us. While we make unequivocal demands, we conduct our communications professionally, observing the Federal Fair Debt Collection Practices Act and the California Robbins-Rosenthal Fair Debt Collection Practices Act.



Locating the Debtor's Assets and Income

After we locate the debtor, we assess their ability to repay the debt. Since many debtors will feign indigence, or refuse to cooperate in any way, it becomes necessary to divine their means of support. In addition to the skip tracing resources at our disposal, we can use additional methods to uncover their property and their income. One of these methods is a legal process known as the Order for Debtor Examination. We obtain a court order that requires the debtor to appear before a judge with all of their financial information for examination. For the Examination, we regularly subpoena pertinent information from parties with whom the debtor does business. It is common for us to receive a cash payment at the Examination and arrange a payment plan. If the debtor fails to appear, the judge may issue a warrant for their arrest. Many debtors have spent the weekend in the gray bar hotel, the local jail, due to their failure to appear at one of our Debtor exams! Come Monday morning, they are generally much more co-operative.

Attaching the Debtor's Assets

For the debtor who flat out refuses to pay their debt, as a law firm, we can instruct the Sheriff and/or the courts to seize or lien their bank accounts, real and personal property, wages and/or business income. Since there are many exempt sources of income and exempt assets, it is crucial to know exactly what they have and what legal process to use to attach it. When this is certain, we obtain a court order to effect collection of the debt.

If the debtor is employed, up to 25% of their wages can be garnished. If they have a business, the Sheriff can enforce a "till tap" and remove all cash receipts from their place of business. Their non-exempt bank accounts can be levied for the full amount of the judgment. In some cases, some personal property such as automobiles, jewelry and luxury items can be identified and attached by the Sheriff's office for judicial sale.

While the Sheriff is in possession of the confiscated funds or property, the debtor can file a claim of exemption to stop the process. On the rare occasion that this happens, our office files opposition papers and with thorough preparation, appears at the hearing to oppose the claim of exemption.

Another effective tool that our firm uses is the filing of an Abstract of Judgment in the county where the debtor has or is likely to have real property. The Abstract will create a lien on the property which must be satisfied before a purchase, sale or mortgaging of the property can be completed.

Even if the debtor has assets or income in another state, we can collect in most states through what is known as a “sister state judgment.” Although a somewhat lengthy and complex process, our office can domesticate judgments in the state and county of the debtor’s residence or business, and enforce the judgment as though it were here in California.

Satisfying the Judgment

We maintain all collection files through our automated debt collection system. This system allows us to successfully oversee, track, review, update, and appropriately handle all files in our in-house collection department. Our system accurately maintains the amount owed, calculates interest on the unpaid principal balance, adds any additional costs incurred and credits any and all payments received. Our system will properly report and update files with the current status to the credit reporting bureaus. Upon receipt of the final monies owed, our office will promptly file a satisfaction of judgment with the appropriate court. We handle all your collection needs, from start to finish.

We are a law firm that enforces and collects judgments, not a collection agency. We pursue collections with the same tenacity and efficiency that we apply to an eviction case. Whether we are enforcing a judgment or pursuing a tenant who has just skipped with a balance due, our expertise in landlord-tenant issues gives us the ability to successfully recover your money as soon as possible.



Conclusion

At The Duringer Law Group, our mission is to offer superior service and continuing legal support to our clients. As part of our commitment to service, we want to keep you fully informed on the law in this area. As one of our clients, you will have access to our website which contains legal information, legislative updates and other materials. You will also be provided with court approved forms for use in the management of your property. Also, we will be glad to speak to you or your management staff regarding any landlord- tenant matter. Of course, there is never a charge or fee for this service.

To be successful in today's market, a law firm must offer its clients more than just a minimal level of service. A successful law firm must provide complete and continuing support to its clients. At The Duringer Law Group, we are committed to providing you with the absolute highest level of personal service and support.



The Eviction Fast Track Time Chart

Tenant fails to comply
With the Notice

Landlord Contacts the
Durringer Law Group
[Day 0]

The Summons and Complaint
For Unlawful Detainer is filed
And Served on the Tenant
[Day 0-1]



Uncontested

Tenant fails to respond to
The Complaint
[Day 5-6]

Attorney files Request for
Default
[Day 6-7]

Court Enters Judgment
[Day 6-10]

Court Issues Writ
Of Possession
[Day 6-12]

Sheriff Posts Writ
[Day 8-15]

Lockout Occurs
[Day 14-25]

**Our Fast Track Time in the
Uncontested Case is typically
14-25 Days**

Contested

Tenant Responds to
The Complaint
[Day 1-5]

Attorney files Memo to Set
Trial with the Court
[Day 6-8]

Court Sets Trial
Date, Attorney and
Client Notified
[Day 11-15]

Court or Bench Trial
[Day 20-25]

Judgment Entered
[Day 20-26]

Court Issues Writ
Of Possession
[Day 20-28]

Sheriff Posts Writ
[Day 21-30]

Lockout Occurs
[Day 28-45]

**Our Fast Track Time in the
Contested Case is typically
28-45 Days**

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