

**HOW TO FILE AN ANSWER  
TO AN EVICTION LAWSUIT  
(UNLAWFUL DETAINER )**

A lawsuit to evict a tenant is called an **unlawful detainer**. The one who is bringing the lawsuit is called the plaintiff. The one who is being sued is called the defendant. If you are sued, you have several options:

1. You can defend yourself by filing an **Answer** to the lawsuit in court. Special forms are used and are attached to this packet or you can get them the Clerk's office. You must file an Answer **within 5 days** of the date you were personally served with the Summons and Complaint.
2. You can choose not to defend yourself and allow the landlord to obtain a **default judgment** against you. A **default** means that you failed to answer the complaint in the time required by law. If a default is entered against you, you CANNOT defend yourself in the case, and you may be forced to move from the property. **WARNING:** a judgment against you could show on your credit report and make it harder for you to rent another place.

**IMPORTANT: If you wish to explore this option it is strongly suggested that you file an answer to the complaint to prevent a default being taken against you.**

## **1. PREPARE THE ANSWER**

An Answer form (Form UD-105) has been attached, along with an example to assist you. **This form is used by a person who is a named defendant in the Complaint.** If you are not a named defendant but was served with a copy of the Complaint, occupied the premises on or before the date the complaint was filed and still live at the premises, then you must file a **Prejudgment Claim of Right to Possession** form. A copy has been included in this packet, along with an example to assist you.

Referring to the example, complete the Answer to the best of your ability, date and sign it.

**Stating Your Defenses:** Many tenants believe they have a moral defense, but the law only recognizes certain kinds of legal defenses known as *Affirmative Defenses*. The most common affirmative defenses are listed on the Answer form as Item No. 3(a) through (i) and are described as follows:

- a. **Breach of the warranty to provide habitable premises.** Every property rented for people to live in has to meet certain minimum health and safety standards. The standards for keeping a property safe and sanitary are called the **warranty of habitability**. You have the right to a secure property free of leaks, with working plumbing, safe gas and electricity, heat, hot and cold running water, clean and safe common areas (areas shared with others such as sidewalks and laundry rooms), and free of rats, mice, roaches or other bugs. If the health or safety problem was caused by normal wear and tear, and not by you or your guests, and if you told the landlord about the problem and he or she failed to make the repairs in a reasonable time, you may be able to withhold the rent money until the repairs are made. If you are going to utilize this defense, you need to give the Landlord written notification prior to your withholding. If you do withhold the rent, you should have the money when you come to trial.

**b. Deducting Needed Repairs from the Rent.** If the landlord does not maintain the property and you need to make repairs yourself, you must first give your landlord written notice of the things to be fixed, and your intent to fix them and subtract the costs from your next month's rent if the repairs are not made in a reasonable time. You must allow your landlord a "reasonable" time to make the repairs before you do them yourself and deduct the costs. A "reasonable" time is usually considered 30 to 60 days, unless the problem creates an emergency situation in which health or safety are put at risk if not repaired immediately.

**c. Landlord's Refusal to Accept the Rent.** If your landlord gave you a 3-Day Notice to Pay or Quit, and you tried to pay your landlord the full amount of rent due before the end of the three days but the landlord refused to accept it, you can check box "c" and state the date when you tried to pay the rent. You should have the rent money with you at the trial.

**d. Landlord Waives or Cancels the Notice to Quit.** If your landlord tells you to ignore the notice to quit, or accepts rent from you after giving you the 3-day notice to quit, this defense may apply. If the landlord gave you a 30 or 60 day notice to quit, and later accepted rent to cover a period of time after the 30 or 60 days, this defense may also apply. If you use this defense, save the rent money in a separate bank account and leave it there until your trial. Having the rent money will help show the judge your good faith, and will help you to settle the case, or make it easier if you have to move.

**e. Retaliatory Eviction.** If you think the landlord is evicting you to get even because you exercised your legal rights, this defense may apply. An example might be a landlord evicting a tenant for reporting the landlord to the building and safety department for code violations.

**f. Discrimination.** If the landlord is evicting you for reasons which are not related to how good a tenant you are, you may have a defense based on discrimination. A landlord cannot evict or refuse to rent to a tenant on the grounds of race, color, sex, religion, national origin, marital status, sexual orientation, number of children, occupation, physical or mental disability, or because the tenant is receiving public assistance

**g. Rent Control.** This defense only applies in those areas where local rent control laws are still enforced, such as certain mobile home parks and federal housing projects.

**h. Acceptance of Rent After Expiration of Notice.** This defense might apply if the landlord has accepted rent from you after the end of the 3- or 30-day notice given to you.

## **2. SERVE THE ANSWER**

Before you can file your Answer (or Prejudgment Claim of Right to Possession) with the court, a copy must have been served on the plaintiff or plaintiff's attorney. It can be **served** by mail but only by a person who is not a **plaintiff** or **defendant** in the case.

The **Proof of Service by mail** form is used to show the court that a copy of your answer was sent to the other side before you file the original. It does not have to be received by the other side before you file, only put in the mail.

The Proof of Service must be signed by a person over age 18 who is **not** a party to the case. This means that neither you, nor any other defendant in the case, can sign the proof of service. **THE COURT WILL NOT ACCEPT AN ANSWER OR PREJUDGMENT CLAIM OF RIGHT TO POSSESSION FOR FILING WITHOUT A SIGNED PROOF OF SERVICE.**

### **3. FILE THE ANSWER**

Once the Answer has been completed and signed and the Proof of Service by Mail has been completed and signed by the person mailing the copy, immediately make two (2) copies of both documents. Give one set of copies to the person to mail. Take the original and one copy to the Clerk (Civil Window) for filing at 1100 I Street, Modesto, California.

There is a filing fee of \$180.00 for each person named as a defendant or filing a Prejudgment Claim of Right to Possession, unless you qualify for a fee waiver. A fee waiver packet can be obtained from the Clerk's office.

Now you are able to explore the possibility of settlement your case through Mediation. However, be sure to attend any court dates you receive until such time a settlement has been signed by both parties and filed with the Court.

**SEE ATTACHED SAMPLE MATERIALS**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): <b>YOUR NAME YOUR ADDRESS CITY, STATE &amp; ZIP</b>	TELEPHONE NO.: <b>YOUR TEL #</b>	FOR COURT USE ONLY
ATTORNEY FOR (Name): <b>IN PRO PER</b>		
NAME OF COURT: Superior Court, County of Stanislaus STREET ADDRESS: 1100 I Street MAILING ADDRESS: P.O. Box 1098 CITY AND ZIP CODE: Modesto, CA 95353 BRANCH NAME:		
PLAINTIFF: <b>NAME OF LANDLORD AS SHOWN ON COMPLAINT</b>		
DEFENDANT: <b>NAME OF TENANT NAME AS SHOWN ON COMPLAINT</b>		
<b>ANSWER—Unlawful Detainer</b>		CASE NUMBER: <b>AS ON COMPLAINT</b>

1. Defendant (names): **YOUR NAME**

answers the complaint as follows:

2. Check **ONLY ONE** of the next two boxes:

- a.  Defendant generally denies each statement of the complaint *than \$1,000*.
- b.  Defendant admits that all of the statements of the complaint are true EXCEPT
- (1) Defendant claims the following statements of the complaint are false (use paragraph numbers from the complaint or explain):

IF AMOUNT REQUESTED THAT YOU PAY ON PAGE 2 OF COMPLAINT IS LESS \$1,000.00 THEN "X" BOX 2(a), OTHERWISE "X" BOX 2(b).

IF YOU CHECKED BOX 2(b), WRITE PARAGRAPH NUMBERS FROM THE COMPLAINT YOU CLAIM TO BE FALSE HERE

- Continued on Attachment 2b (1).
- (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (use paragraph numbers from the complaint or explain):

IF YOU CHECKED BOX 2(B), WRITE PARAGRAPH NUMBERS FROM COMPLAINT WHICH YOU DO NOT HAVE ENOUGH INFORMATION TO KNOW IF THEY ARE TRUE OR FALSE.

3. AFFIRMATIVE DEFENSES (NOTE: For each box checked, you must state brief facts to support it in the space provided at the top of page two (item 3j)).

- a.  (nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.
- b.  (nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c.  (nonpayment of rent only) On (date): , before offered the rent due but plaintiff would not accept it.
- d.  Plaintiff waived, changed, or canceled the notice to quit.
- e.  Plaintiff served defendant with the notice to quit or filed the complaint to retaliate.
- f.  By serving defendant with the notice to quit or filing the complaint, plaintiff is in violation of the Constitution or laws of the United States or California.
- g.  Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):

AFFIRMATIVE DEFENSES ARE LEGAL REASONS WHY YOU SHOULD NOT HAVE TO PAY THE RENT. "X" THOSE BOXES THAT APPLY TO YOU

(Also, briefly state the facts showing violation of the ordinance in item 3j.)

- h.  Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- i.  Other affirmative defenses are stated in item 3j.

PLAINTIFF (Name): <b>NAME OF LANDLORD AS SHOWN ON COMPLAINT</b>	CASE NUMBER:
DEFENDANT (Name): <b>NAME OF TENANT AS SHOWN ON COMPLAINT</b>	<b>AS ON COMPLAINT</b>

3. AFFIRMATIVE DEFENSES (*cont'd*):

- j. Facts supporting affirmative defenses checked above (*identify each item separately by its letter from page one*):

WRITE IN ANY FACTS TO SUPPORT YOUR REASONS FOR CHECKING ANY OF THE AFFIRMATIVE DEFENSES IN ITEM 3(a) THRU 3(i). IF YOU NEED MORE ROOM TO WRITE IN THESE FACTS, CHECK EITHER BOX (1) OR (2) BELOW AND CONTINUE ON A SEPARATE SHEET OF PAPER.

- (1)  All the facts are stated in Attachment 3j.      (2)  Facts are continued in Attachment 3j.

## 4. OTHER STATEMENTS

- a.  Defendant vacated the premises on (*date*):  
b.  The fair rental value of the premises alleged in the complaint is excessive (*explain*):  
c.  Other (*specify*):

"X" THE BOXES IN ITEMS 4 AND 5 AS THEY APPLY TO YOU

## 5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.  
b. costs incurred in this proceeding.  
c.  reasonable attorney fees.  
d.  that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.  
e.  Other (*specify*):

WRITE IN NUMBER OF ATTACHED PAGES

6.  Number of pages attached (*specify*):

**UNLAWFUL DETAINER ASSISTANT (Business and Professions Code sections 6400-6415)**

7. (*Must be completed in all cases*) An unlawful detainer assistant  did not  did for compensation give advice or assistance with this form. (*If defendant has received any help or advice for pay from an unlawful detainer assistant, state*):

- a. Assistant's name:      b. Telephone No.:  
c. Street address, city, and ZIP:

d. County of registration:

e. Registration No.:

f. Expires on (*date*):

**YOUR NAME** \_\_\_\_\_

(TYPE OR PRINT NAME)

>

\_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)

>

\_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

**VERIFICATION**

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

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

**NAME OF TENANT AS SHOWN ON COMPL** \_\_\_\_\_

(TYPE OR PRINT NAME)

,

\_\_\_\_\_  
(SIGNATURE OF DEFENDANT)

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

1. If you live here and you do not complete and submit this form within 10 days of the date of service shown on this form, you will be evicted without further hearing by the court along with the persons named in the Summons and Complaint.
2. If you file this form, your claim will be determined in the eviction action against the persons named in the Complaint.
3. If you do not file this form, you will be evicted without further hearing.

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address):  <div style="text-align: right;">TELEPHONE NO.: <b>YOUR TEL#</b></div> <b>YOUR NAME</b> <b>YOUR ADDRESS</b> <b>CITY, STATE &amp; ZIP</b>	<b>FOR COURT USE ONLY</b>
ATTORNEY FOR (Name): <b>NAME OF COURT:</b> Superior Court, County of Stanislaus STREET ADDRESS: 1100 I Street MAILING ADDRESS: P.O. Box 1098 CITY AND ZIP CODE: Modesto, CA 95353 BRANCH NAME:	
PLAINTIFF: <b>NAME OF LANDLORD AS SHOWN ON COMPLAINT</b> DEFENDANT: <b>NAME OF TENANT AS SHOWN ON COMPLAINT</b>	
<b>PREJUDGMENT CLAIM OF RIGHT TO POSSESSION</b>	CASE NUMBER: <b>AS ON COMPLAINT</b> <small>(To be completed by the process server)</small> DATE OF SERVICE:  <small>(Date that this form is served or delivered, and posted, and mailed by the officer or process server)</small>
<div style="border: 1px solid black; padding: 5px;"> <p>Complete this form only if ALL of these statements are true:</p> <ol style="list-style-type: none"> <li>1. You are NOT named in the accompanying Summons and Complaint.</li> <li>2. You occupied the premises on or before the date the unlawful detainer (eviction) Complaint was filed.</li> <li>3. You still occupy the premises.</li> </ol> </div>	

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (specify): **YOUR NAME**
2. I reside at (street address, unit No., city and ZIP code): **THE ADDRESS WHERE YOU LIVE**
3. The address of "the premises" subject to this claim is (address): **THE ADDRESS WHICH IS THE SUBJECT OF THE LAWSUIT**
4. On (insert date): **COMPLAINT FILING DATE**, the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. *(This date is the court filing date on the accompanying Summons and Complaint.)*
5. I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).
8. I was not named in the Summons and Complaint.
9. I understand that if I make this claim of right to possession, I will be added as a defendant to the unlawful detainer (eviction) action.
10. *(Filing fee)* I understand that I must go to the court and pay a filing of \$ **180.00** or file with the court the form "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file with the court the form for waiver of court fees within 10 days from the date of service on this form (excluding court holidays), I will not be entitled to make a claim of right to possession.

(Continued on reverse)

PLAINTIFF (Name): <b>NAME OF LANDLORD AS SHOWN ON COMPLAINT</b>	CASE NUMBER:
DEFENDANT (Name): <b>NAME OF TENANT AS SHOWN ON COMPLAINT</b>	<b>AS ON COMPLAINT</b>

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

11. (Response required within five days after you file this form) I understand that I will have five days (excluding court holidays) to file a response to the Summons and Complaint after I file this Prejudgment Claim of Right to Possession form.

12. **Rental agreement.** I have (check all that apply to you):

- a.  an oral rental agreement with the landlord.
- b.  a written rental agreement with the landlord.
- c.  an oral rental agreement with a person other than the landlord.
- d.  a written rental agreement with a person other than the landlord.
- e.  other (explain):

**"X" ALL BOXES THAT APPLY TO YOU**

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

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

Date:

**YOUR NAME** \_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF CLAIMANT)

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

**- NOTICE TO OCCUPANTS -**

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

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

(Where to file this form) You can complete and SUBMIT THIS CLAIM FORM WITHIN 10 DAYS from the date of service (on the reverse of this form) at the court where the unlawful detainer (eviction) complaint was filed.

(What will happen if you do not file this form) If you do not complete and submit this form (and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee), YOU WILL BE EVICTED.

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

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>YOUR NAME</b> <b>YOUR ADDRESS</b> <b>CITY, STATE &amp; ZIP</b>  TELEPHONE NO.: <b>YOUR TEL #</b> FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>IN PRO PER</b>	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Stanislaus STREET ADDRESS: 1100 I Street MAILING ADDRESS: P.O. Box 1098 CITY AND ZIP CODE: Modesto, CA 95353 BRANCH NAME:	
PETITIONER/PLAINTIFF: <b>NAME OF LANDLORD AS STATED ON COMPLAINT</b> RESPONDENT/DEFENDANT: <b>NAME OF TENANT AS STATED ON COMPLAINT</b>	
<b>PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL</b>	CASE NUMBER: <b>AS ON COMPLAINT</b>

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

1. I am over 18 years of age and not a party to this action. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is: WRITE IN THE ADDRESS OF PERSON WHO IS MAILING THE ANSWER FOR YOU HERE
3. On (date): \_\_\_\_\_ I mailed from (city and state): \_\_\_\_\_ the following documents (specify):

**ANSWER - UNLAWFUL DETAINER**

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

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

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

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

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

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

>  
 \_\_\_\_\_  
 (SIGNATURE OF PERSON COMPLETING THIS FORM)