

# YOUR GUIDE TO CALIFORNIA EVICTIONS

*The following information is provided to introduce you to what an eviction involves. Since individual needs vary dramatically, be sure to contact this office before deciding what is best for you.*

**WHAT IS AN EVICTION?** - An eviction is the process of recovering possession of real property from a renter. The process consists of two parts: (1) The **THREE OR THIRTY DAY NOTICE** - by which you inform your tenant that you demand possession of your real property and any monies owed you; and (2) The **UNLAWFUL DETAINER** - by which you obtain a court order allowing a Sheriff to return possession of your real property to you and also to get a money judgment for rents, attorneys' fees, and legal costs. (Note: a different procedure is required for mobile homes)

**IS AN EVICTION APPROPRIATE?** - While it may sound obvious, evictions only apply to tenants. Tenants are people who rent the right to use your real estate in return for doing certain things such as paying rent and utilities and maintaining the property. You cannot generally evict any person who holds a legal or equitable ownership interest (such as a co-owner, equity share partner, or possibly even a tenant under a lease option). Tenancies can (and should) be created by written agreement. However, oral rental agreements are enforceable. So, it is critical at first to evaluate the relationship between you and the occupant of your property.

**EVICTION NOTICES** - You begin an eviction by serving the tenant with a formal Notice. The most common is the Three Day Notice to Pay Rent or Quit which is a demand for your tenant to pay or vacate and sets forth the legal consequences if your tenant doesn't comply. A Three Day Notice to Perform Covenant or Quit is used for any other breach of your rental agreement. Both of these Notices allow the tenant to cure the default and keep preserve their tenancy. If there is no breach but you merely want possession, you can serve a Thirty Day Termination of Tenancy Notice (unless a lease is in force). Sometimes, a tenant acts so badly that you want them out sooner. You might be able to use a Three Day Notice to Quit for nuisance, unlawful acts, or damage to the property. Note that even if your tenant does vacate, they still must pay you any money they owe you. These Notices can be served by you or anybody and must name the known tenants and all other occupants.

**UNLAWFUL DETAINER** - If your tenant doesn't comply with the Notice, we prepare and file with the County court, a Summons and Complaint and any other court required documents. The Summons and Complaint are then served on the tenant personally by a disinterested third party preferably a licensed process server. The Complaint sets forth the grounds for the eviction and the remedies you're seeking (possession, rent, fees, costs, but not late fees or damages). The Summons gives the tenant, five days to file an Answer with the Court. If the tenant doesn't Answer in time, we can file a Default which stops the tenant from filing a late Answer and allows you to get a court order for possession (Writ of Possession) right away. If your tenant does file an Answer, we file documents to set the case for trial. At trial, each side will argue their case and the judge will generally make a decision right from the bench. Assuming you win, you get a Money Judgment and a Writ of Possession which the Sheriff will use to actually evict your tenant from your property and return the property to you.

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## **DECISIONS TO MAKE**

Only a small percentage of evictions actually go to trial. A few tenants will agree to voluntarily vacate after receiving your Notice (although often this is a stall). A few more tenants will vacate after service of your Summons and Complaint. Most will fail to file an Answer and will be put out by the Sheriff after you take their Default. It is always appropriate to have settlement discussions with your tenant but what you agree to can have major consequences. For example, if you accept any rent after serving a three day pay rent Notice, you will terminate your right to use this Notice to do an eviction even if the tenant only pays a small amount. The better procedure is to create a legally enforceable agreement (called a Stipulation) under which, if the tenant fails to do what they promise to do, you can immediately get both a Writ of Possession and a Money Judgment. Even if you don't do these private negotiations, most courts today are requiring some form of settlement discussions before trial. These can be relatively easy (such as the discussions on the day of trial in Sacramento), or they can be extremely burdensome (such as the court supervised settlement conference before a trial date can even be set in Yuba County).

## **HOW LONG WILL IT TAKE FOR ME TO GET MY PROPERTY BACK?**

The time to complete an eviction is controlled both by your actions as well as the law and rules of the local court. You can't change the law but you can and must be sure that your documents and processes are complete and proper. Although horror stories such as six month delays are rare, they can occur if you don't do things correctly. The most typical delay occurs in getting your tenant served with the Summons and Complaint. Since they must be personally served, many tenants will try to "duck" service by not answering their door. Good process servers can usually get around these actions but occasionally a court posting order will be required. As with any trial, a losing tenant may try to stop their eviction and may even appeal the trial results. More often, some other person will come forward and file a Prejudgment Claim of Right to Possession asserting that they have a right to be in the property. Unless this form was served with your Summons, a separate hearing on the claim will be required. Generally though, if your tenant defaults, you can expect to recover possession within 2 weeks from the time you serve your Summons and Complaint. If a trial is required, 4-5 weeks from service is typical. In a worst-case scenario, your tenant would declare bankruptcy which could add a month or more to the process. Luckily however, this rarely happens.

## **CONCLUSION**

You have a legal right to demand that your tenants honor their rental agreement and the legal system is available to help you enforce your rights. When set-up properly, your eviction action can run smoothly and get you the results you want, at the minimum cost, and in the least possible time. Though you can do this yourself, most property owners and managers have found that working through a good, experienced real estate attorney, such as the Law Office of Stephen J. Beede, saves time, trouble and money well in excess of the cost of such legal representation. Attorney Steve Beede has years of experience with hundreds of eviction actions and represents homeowners, property managers, lenders, brokers, and even other attorneys. Through his services, and those of his associates, he is able to handle eviction actions (as well as other legal services) for his clients anywhere in California. We look forward to assisting you with any legal problems that may arise. Also, please feel free to refer our services to other family members or friends who may have legal needs.