California Eviction Defense Manual

Chapter Outlines

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

1

Overview of Unlawful Detainer Law

I. SCOPE OF THIS BOOK §1.1

II. LANDLORD'S ALTERNATIVES TO UNLAWFUL DETAINER ACTION §1.2

III. ETHICS §1.3

IV. SUMMARY OF UNLAWFUL DETAINER PROCESS §1.4

A. Description of Unlawful Detainer Action §1.5

B. Reduced Time Frame Governing Unlawful Detainer Procedure §1.6

C. Landlord Must Strictly Comply With Statutory Requirements

§1.7

D. Notice Requirements §1.8

E. Bases for Terminating Tenancy; Applicable Notice §1.9

1. Termination Requiring 3-Day Notice (Longer Notice Permitted) §1.10

2. Termination Requiring 30-Day or 60-Day Notice §1.11

3. Termination Requiring Other Notice §1.12

4. Termination Requiring No Notice §1.13

F. Jurisdiction and Venue §1.14

G. Default Judgment §1.15

H. Bases for Defending Unlawful Detainer Actions §1.16

I. Trial

1. Tenant Entitled to Jury Trial if Answer Presents Admissible Defenses §1.17

2. Rent and Damages Awardable to Landlord §1.18

J. Posttrial Motions §1.19

K. Execution by Sheriff §1.20

V. SUMMARY OF POTENTIAL TENANT RESPONSES TO LANDLORD'S ACTIONS §1.20A

VI. INVALIDITY OF LEASE PROVISION WAIVING TENANT'S RIGHTS §1.21

VII. WRIT OF IMMEDIATE POSSESSION §1.22

VIII. UNAVAILABILITY OF UNLAWFUL DETAINER IF TENANT IS NO LONGER IN POSSESSION OF PREMISES §1.23

Back to Top

Relationship of Unlawful Detainer to Other Actions

I. ISSUES NOT COGNIZABLE IN UNLAWFUL DETAINER ACTIONS §2.1

II. COORDINATION AND CONSOLIDATION OF UNLAWFUL DETAINER WITH OTHER ACTIONS §2.2

A. Coordination of Complex Actions §2.2A

B. Transfer of Noncomplex Actions §2.2B

C. Consolidation of Actions Pending in Same County §2.2C

III. CONVERSION OF UNLAWFUL DETAINER ACTION TO ACTION FOR EJECTMENT §2.3

IV. SEVERING POSSESSION ISSUE FROM RENT-DUE ISSUE §2.4

V. TENANT'S SUIT FOR DECLARATORY OR INJUNCTIVE RELIEF; STAY OF UNLAWFUL DETAINER ACTION

A. Overview: Can Unlawful Detainer Actions Be Enjoined? §2.5

B. Obtaining Injunctive Relief

1. Legal Basis; Grounds §2.5A

2. The Newby Exception: Adequate Remedy at Law §2.5B

3. Overcoming Newby Limitations §2.5C

4. Procedure; Bond Required §2.5D

VI. LANDLORD’S SUIT FOR INJUNCTIVE RELIEF §2.6

VII. ACTIONS AFTER ENTRY OF JUDGMENT §2.7

VIII. ARBITRATION PROVISION IN LEASE §2.8

IX. ADMINISTRATIVE MANDAMUS §2.9

X. BANKRUPTCY §2.10

Back to Top

Self-Help by Landlord

I. USE OF SELF-HELP BY LANDLORD §3.1

II. FORCIBLE ENTRY AND DETAINER §3.2

A. Examples of Forcible Entry and Detainer §3.3

B. Retaking Abandoned Premises Is Not Forcible Entry or Detainer §3.4

C. Recovering Punitive Damages for Forcible Entry or Detainer Requires Showing of Malice §3.5

III. SHUTTING OFF UTILITIES OR OTHERWISE BARRING TENANT'S USE OF PROPERTY

A. Civil Code §789.3 §3.6

B. Remedies Under Public Utilities Code and CC §1942.2 §3.6A

IV. OTHER ACTIONS BY LANDLORD THAT MAKE PREMISES UNINHABITABLE §3.7

V. SELF-HELP EVICTIONS OF TENANTS IN RESIDENTIAL HOTELS §3.8

VI. SELF-HELP EVICTIONS OF LODGERS §3.9

VII. SELF-HELP EVICTIONS OF OCCUPANTS OF TRANSITIONAL HOUSING §3.10

VIII. SELF-HELP EVICTIONS OF HOTEL GUESTS §3.11

IX. ANTI-HARASSMENT STATUTE (CC §1940.2) §3.12

Back to Top

I. OFFICE PROCEDURES §4.1

II. LAW OFFICE AUTOMATION §4.2

III. LEGAL REFERENCE MATERIALS §4.3

A. Necessary Legal Sources and Forms §4.4

B. Useful Additional Library Materials §4.5

IV. INITIAL STEPS BEFORE DECIDING WHETHER TO REPRESENT TENANT

A. Initial (Telephone) Contact With Prospective Client §4.6

B. Form: Telephone Intake Form §4.7

C. Scheduling Meeting With Prospective Client §4.8

D. Conflict of Interest in Representing Tenant

1. Performing a Conflicts Check §4.9

2. Common Conflict Situations in Unlawful Detainer Actions §4.10

E. Initial Meeting With Prospective Client §4.11

F. Use of Client Interview Questionnaire §4.12

G. Form: Client Interview Questionnaire §4.13

H. Conduct of Initial Meeting §4.14

I. Investigate Tenant's Relationship With Former Counsel and Any Litigation History §4.15

J. Contact Landlord's Attorney for Preliminary Look at Opposing View of Case §4.16

K. Initial Assessment of Case §4.17

L. Scope of Initial Assessment §4.18

M. Allaying Tenant's Fears §4.19

V. REPRESENTATION OF TENANT

A. Decision to Represent Tenant §4.20

1. If Attorney Will Not Represent or Assist Tenant §4.21

2. When More Time Needed for Decision on Representation §4.22

3. Form: Substitution of Attorney—Civil (Without Court Order) (Judicial Council Form MC-050; Mandatory) §4.23

4. If Attorney and Tenant Agree That Attorney Will Represent or Assist Tenant §4.24

5. Disclosure Regarding Professional Liability Insurance §4.24A

B. Representation Agreements and Ground Rules §4.25

1. Delegating Tasks to Client §4.26

2. Contents of Representation Agreement §4.27

3. Form: Representation Agreement—Private Practitioner §4.28

4. Form: Client Retainer Agreement—Legal Services Organization §4.29

C. Limited Scope Representation (Unbundling)

1. Applicable Law §4.29A

2. Checklist: Tenant Fee Agreement §4.29B

D. Deposit of Rent Due Into Client Trust Account §4.30

E. Form: Requirement for Deposit of Rent Into Attorney-Client Trust Account §4.31

VI. PROCEDURE AFTER REPRESENTATION IS UNDERTAKEN

A. Ascertain Goal of Representation §4.32

1. Ascertain Whether Tenant Wants to Continue Living in Rental Unit §4.33

2. Goal of Representation Is Not Necessarily Successful Defense of Unlawful Detainer Action §4.34

B. Counsel Should Investigate Facts of Case §4.35

C. Determining Defense Strategy §4.36

D. Making Choices on Strategy and Tactics §4.37

E. Example of Strategic and Tactical Choices in Procedure When Defective 3-Day Notice Was Served §4.38

1. Strategy and Tactics: Filing Motion to Quash Service of Summons or Demurrer §4.39

2. Strategy and Tactics: Filing an Answer §4.40

3. Strategy and Tactics: Filing Motion for Summary Judgment §4.41

F. Counsel Should Simultaneously File Pleadings, Conduct Discovery, and Negotiate §4.42

Back to Top

5

Grounds for Eviction

I. GROUNDS FOR EVICTION GENERALLY §5.1

II. GROUNDS FOR EVICTION BASED ON TENANT'S DEFAULT; 3-DAY NOTICE REQUIRED §5.2

III. REASONS FOR TERMINATION NOT BASED ON TENANT'S DEFAULT; NOTICE REQUIRED §5.3

IV. REASONS FOR TERMINATION NOT BASED ON TENANT'S DEFAULT; NOTICE NOT REQUIRED §5.4

V. TERMINATING MOBILEHOME PARK TENANCIES §5.5

VI. EVICTION BROUGHT BY CITY PROSECUTOR OR CITY ATTORNEY §5.6

Back to Top

6

Three-Day Notice

I. PURPOSE AND EFFECT OF 3-DAY NOTICE §6.1

A. Purpose of 3-Day Notice §6.2

B. If 3-Day Notice Is Defective §6.3

II. IMMEDIATE TENANT RESPONSE TO SERVICE OF 3-DAY NOTICE (BEFORE COMPLAINT HAS BEEN FILED) §6.4

III. STRICT COMPLIANCE WITH STATUTE IS REQUIRED §6.5

IV. NOTICE REQUIRED EVEN IF LEASE PROVIDES THAT IT IS NOT NECESSARY §6.6

V. COMPUTATION OF NOTICE PERIOD §6.7

VI. NOTICE IS VALID EVEN THOUGH IT CONTAINS MORE THAN ONE REASON FOR EVICTION §6.8

VII. NOTICE MAY BE WITHDRAWN §6.9

VIII. FORM OF NOTICE §6.10

A. Notice Must Be in Writing §6.11

B. Description of Premises in Notice §6.12

C. Signature on Notice §6.13

D. Demand for Possession Must Be Unequivocal §6.14

E. Statement of Three Days in Notice Itself May Not Be Required §6.15

F. Notice May Declare Election of Forfeiture §6.16

G. Demand for Rent and Charges

1. Notice to Quit Must Include Demand for Rent as Alternative §6.17

2. Notice Must Specify No More Than Rent Actually Due §6.18

a. Precise Amount of Rent Need Not Be Specified if Calculation of Rent Depends on Tenant's Accounting §6.19

b. Statement of Rent Due, and Additional Claims in Notice §6.20

c. Effect of Federal Fair Debt Collection Practices Act §6.20A

3. Notice Seeks Less Than Actual Amount Owed §6.21

4. One-Year Limitation on Amount of Rent That Can Be Demanded §6.22

5. Inclusion of Late Charges in Notice §6.23

6. Validity of Late Charges Landlord Claims Are Due

a. As Liquidated Damages §6.24

b. As Violation of Usury Law §6.24A

IX. SERVICE OF NOTICE

A. When Notice May Be Served §6.25

1. “Holidays” Defined §6.26

2. When Tenant May Perform Under Notice §6.27

B. Method of Service §6.28

C. Statutory Requirements for Service of 3-Day Notice §6.29

X. WHEN 3-DAY NOTICE IS BASED ON FAILURE TO PAY RENT §6.30

XI. TENDER OF RENT

A. Method of Tender of Rent §6.31

B. Proof That Tender Was Made §6.32

C. Depositing Money in Landlord's Bank Account §6.33

D. Effect of Tender of Rent on Obligation to Pay Rent §6.34

E. Time of Tender of Rent

1. Tender of Rent Before Service of Notice §6.35

2. Tender of Rent After Notice Is Served and Before Notice Period Expires §6.36

3. Tender of Rent After Notice Period Has Expired §6.37

XII. WHEN 3-DAY NOTICE IS BASED ON DEFAULT UNDER LEASE OTHER THAN FAILURE TO PAY RENT

A. Violation of Covenant in Lease Generally; Statutory Basis for 3-Day Notice §6.38

1. Express and Implied Covenants §6.39

2. Trivial or Technical Breach Not Sufficient §6.40

3. Waiver and Estoppel §6.41

4. Repeated Acceptance of Late Rent §6.42

5. Effect of Tenant’s Performance §6.43

6. Whether Notice Must Be Given in Alternative §6.44

7. Stating the Breach §6.45

B. Violation of Covenant Against Subletting, Assignment, or Waste; Maintaining Nuisance; or Using Premises for Unlawful Purpose §6.46

1. Subletting, Assignment, and Waste §6.47

2. Nuisance §6.48

3. Unlawful Purpose §6.49

XIII. SALE UNDER EXECUTION, MORTGAGE, OR TRUST DEED §6.50

XIV. COMMON FLAWS IN 3-DAY NOTICE OR ITS SERVICE THAT RENDER NOTICE INEFFECTIVE §6.51

XV. EFFECT OF SERVICE OF MORE THAN ONE NOTICE §6.52

Back to Top

7

Thirty-Day/Sixty-Day Notices and Termination Without Notice

I. TERMINATING PERIODIC TENANCIES

A. Using 30-Day Notice §7.1

B. Using 60-Day Notice §7.1A

II. IMMEDIATE TENANT RESPONSE TO SERVICE OF NOTICE §7.2

III. TENANT REMAINS IN POSSESSION AFTER TERMINATION

A. “Holdover” Tenant Defined §7.3

B. Tenant Serves Landlord With Notice of Termination and Remains in Possession After Termination Period §7.4

C. Term Has Expired but Tenant Holds Over §7.5

D. Termination of Employment of Resident Employee §7.6

E. Death of Tenant §7.7

F. Expiration of Fixed-Term Lease §7.8

G. Effect of Landlord’s Acceptance of Rent After Expiration of Fixed Term §7.9

H. Effect of Clause Providing for Automatic Extension or Renewal §7.9A

I. Lodger Who Holds Over in Owner-Occupied Dwelling §7.10

J. Expiration of Periodic (Generally Month-to-Month) Lease §7.11

IV. LENGTH OF PERIOD OF NOTICE

A. Shortened Notice Periods by Agreement §7.12

B. Date on Which Mailed Notice Is Effective §7.13

C. Notice Period Must Expire Before Complaint Can Be Filed §7.14

V. WITHDRAWAL OF NOTICE; ACCEPTANCE OF RENT PAYMENTS §7.15

VI. FORM OF NOTICE

A. Notice Must Be in Writing §7.16

B. Description of Premises and Signature §7.17

C. Notice Cannot Be in the Alternative §7.18

D. Statement of 30 or 60 Days §7.19

E. Cover Sheet; Evictions After Foreclosure §7.19A

VII. APPORTIONMENT OF RENT §7.20

VIII. METHOD OF SERVICE §7.21

IX. TENANCY AT WILL §7.22

X. EFFECT OF SERVICE OF 30-DAY OR 60-DAY NOTICE IN CONJUNCTION WITH SERVICE OF 3-DAY NOTICE §7.23

XI. COMMON FLAWS IN NOTICE OR ITS SERVICE, RENDERING NOTICE INEFFECTIVE §7.24

Back to Top

8

Service of Notices on Tenant

I. EVALUATING SERVICE OF NOTICE §8.1

II. METHODS OF SERVICE OF NOTICE §8.2

A. Personal Service §8.3

B. Substituted Service (CCP §1162(a)(2)) §8.4

C. Service by Posting, Delivery, and Mail (CCP §1162(a)(3)) §8.5

1. Service by Posting Alone Is Insufficient §8.6

2. Service by Mail Alone Is Insufficient §8.7

D. Extension of Tenant’s Time to Act When Notice Is Mailed §8.8

1. Notice Effective on Receipt §8.8A

2. Notice Effective on Mailing §8.8B

3. Effective Date of Notice Extended by CCP §1013 §8.8C

4. Rationale Favoring Extension of Response Period Under CCP §1013 When Notice Is Mailed §8.9

III. IMPROPER SERVICE

A. Effect of Defective Service of Notice §8.10

B. Actual Receipt of Improperly Served Notice §8.11

IV. EFFECT OF SERVICE ON PERSONS OTHER THAN TENANT §8.12

A. Occupants Who Are Neither Tenants nor Subtenants §8.13

B. Cotenants §8.14

C. Subtenants §8.15

V. EXAMPLES OF COMMON MISTAKES IN SERVICE §8.16

VI. PROOF OF SERVICE OF NOTICE §8.17

Back to Top

Negotiating Strategies

I. IMPORTANCE OF NEGOTIATION AND EARLY SETTLEMENT §9.1

A. Definitions of Terms: “Negotiation,” “Target Point,” “Resistance Level,” and “Bottom Line” §9.2

B. Determining Tenant’s Goals and Expectations §9.3

C. Determining the Bargaining Range §9.4

D. Possible Bargaining Outcomes §9.5

E. Evaluating Case §9.6

II. KEY FACTORS TOWARD SETTLEMENT IN TENANT’S FAVOR

A. Merits of Tenant’s Case §9.7

B. Whether Tenant Is Willing to Relinquish Possession §9.8

C. Whether Tenant Is Impervious to Judgment for Damages §9.9

D. Whether Rental Agreement Contains Attorney Fee Clause §9.10

III. DEVELOPING A BARGAINING STRATEGY §9.11

A. Look for Means to Strengthen Tenant’s Case and Weaken Landlord’s §9.12

B. Tenant’s Attorney Must Be Ready to Move Quickly to Take Advantage of Settlement Opportunities §9.13

C. Tenant’s Attorney Should Be Aware of Landlord’s Goals and Fears §9.14

D. Determining How Much to Demand in Initial Settlement Offer §9.15

IV. ADVANTAGES AND DISADVANTAGES OF FACING OPPOSING COUNSEL KNOWN TO TENANT’S COUNSEL §9.16

V. USING BARGAINING TACTICS §9.17

VI. COMMUNICATING WARNINGS TO OPPOSING PARTY §9.18

VII. WHEN LANDLORD’S COUNSEL APPEARS TO BE DRAWING OUT ACTION TO GENERATE FEES §9.19

VIII. DRAFTING SETTLEMENT AGREEMENT §9.20

IX. EVALUATING SUCCESS OF SETTLEMENT AGREEMENT §9.21

Back to Top

10

Proceeding in Forma Pauperis

I. AUTHORITY FOR OBTAINING WAIVER OF COURT FEES AND COSTS §10.1

II. RIGHT TO PROCEED IN FORMA PAUPERIS §10.2

III. SUBSTANTIVE SHOWING OF INDIGENCE §10.3

IV. CLASSES OF CLAIMANTS AND CATEGORIES FOR WHICH FEES AND COSTS MAY BE WAIVED §10.4

V. FEES AND COSTS IN TRIAL COURT

A. Types of Fees and Costs Waived by Initial Application §10.5

B. Waiver of Other Fees and Costs §10.6

C. Applying to Proceed in Forma Pauperis

1. Procedure for Request for Waiver of Court Fees and Costs §10.7

2. Grant of Waiver of Court Fees and Costs Without Hearing §10.7A

3. Hearing on Applicant’s Entitlement to Waiver of Court Fees and Costs §10.7B

4. Court Issues and Serves Order on Request to Waive Court Fees §10.7C

5. Effect of Denial of Waiver on Pleadings Already Filed by Applicant §10.7D

6. Procedure for Subsequent Determinations of Fee Waiver Eligibility §10.8

D. Right to Waiver or Reimbursement of Discovery Costs §10.9

E. Right to Appointment of Attorney §10.10

VI. FEES AND COSTS ON APPEAL

A. Proceeding in Forma Pauperis §10.11

1. Filing Fees §10.11A

2. Fees for Transcript §10.11B

3. Fees for Interpreter §10.11C

4. Appeal Bond Fees §10.11D

B. Review of Denial of Request §10.12

Back to Top

11

Service of Summons and Complaint; Motion to Quash Service of Summons

I. SERVICE OF SUMMONS AND COMPLAINT §11.1

II. IMMEDIATE ACTIONS THAT CAN BE TAKEN ON TENANT'S BEHALF AFTER SERVICE OF SUMMONS §11.2

III. ATTEMPTS TO AVOID SERVICE OF SUMMONS §11.3

IV. FORM OF SUMMONS §11.4

V. FORM: SUMMONS—UNLAWFUL DETAINER—EVICTION (JUDICIAL COUNCIL FORM SUM-130) §11.5

VI. SERVICE OF PROCESS §11.6

A. Methods of Service §11.7

B. Strict Construction of Service Statutes §11.8

C. Effect of Defective Service §11.9

D. New Summons Need Not Be Served With Service of Amended Complaint §11.10

E. Return of Service §11.11

F. Personal Service §11.12

G. Substituted Service §11.13

1. Substituted Service on Individual Defendant §11.14

2. Substituted Service on Business Entity §11.15

3. Showing Reasonable Diligence §11.16

4. Recital on Return of Service §11.17

H. Service by Mail With Acknowledgment of Receipt §11.18

I. Service by Posting and Mailing §11.19

J. Order Allowing Service by Posting §11.20

K. Completion Date of Service by Posting §11.21

L. Service by Publication §11.22

VII. SPECIAL APPEARANCE REQUIRED ON MOTION TO QUASH

A. What Constitutes a General Appearance §11.23

B. Making a Special Appearance §11.24

VIII. GROUNDS FOR MOTION TO QUASH §11.25

A. Error in Filled-Out Summons §11.26

B. Failure to Properly Serve All Required Papers §11.27

C. Motion to Quash When Cause of Action Is Not Properly Unlawful Detainer §11.28

D. Complaint Contains Another Cause of Action in Addition to Unlawful Detainer §11.29

E. Complaint Prays for Damages Not Allowed in Unlawful Detainer §11.30

F. Defendant Erroneously Designated

1. Pleading Requirements; “Doe” Defendants §11.31

2. Entering Judgment Against “Doe” Defendant §11.32

IX. CONSTITUTIONAL CHALLENGE TO FIVE-DAYS-TO-ANSWER REQUIREMENT §11.33

X. MOTION TO QUASH—PROCEDURE

A. Time to File Motion; Effect of Motion on Time to File Answer §11.34

B. Form of Notice §11.35

C. Hearing on Motion to Quash; Burden of Proof §11.36

D. Filing Fees §11.37

XI. FORM: MOTION TO QUASH SERVICE OF SUMMONS; POINTS AND AUTHORITIES; DECLARATION OF TENANT §11.38

XII. FORM: ORDER GRANTING MOTION TO QUASH SERVICE OF SUMMONS §11.39

XIII. EFFECT OF GRANTING MOTION TO QUASH §11.40

XIV. EFFECT OF DENIAL OF MOTION TO QUASH §11.41

XV. APPLICATION FOR WRIT OF MANDATE IF MOTION DENIED §11.42

XVI. POSSIBLE EFFECT OF CCP §1167.4 ON WHETHER TIME FOR FILING RESPONSIVE PLEADINGS IS TOLLED BY PETITION FOR WRIT §11.43

XVII. CHART: TIMELINE FOR TENANT ACTIONS IF SUMMONS OR SERVICE OF SUMMONS WAS DEFECTIVE §11.44

Back to Top

12

Default Judgments

I. PROCEDURE FOR OBTAINING JUDGMENT BY DEFAULT §12.1

II. CHECKLIST: OBTAINING RELIEF FROM ENTRY OF DEFAULT §12.2

III. SERVICE OF APPLICATION FOR ENTRY OF DEFAULT; LANDLORD’S OBLIGATION TO INFORM TENANT §12.3

IV. EFFECT OF ENTRY OF DEFAULT; LATE FILING OF RESPONSE §12.4

V. ENTRY OF DEFAULT; WRIT OF IMMEDIATE POSSESSION §12.5

VI. PROVE-UP HEARING FOR RELIEF OTHER THAN RESTITUTION §12.6

VII. PROCEDURE FOR ENTERING DEFAULT IF SERVICE WAS BY PUBLICATION §12.7

VIII. SETTING ASIDE DEFAULT AND DEFAULT JUDGMENT §12.8

A. Stipulation to Set Aside Default and Default Judgment §12.9

B. Form: Stipulation to Set Aside Default and Default Judgment; Order §12.10

C. Procedures for Applying to Set Aside Default §12.11

D. Grounds for Setting Aside Default and Default Judgment §12.12

1. Mistake, Inadvertence, Surprise, or Excusable Neglect (CCP §473)

a. Relief May Be Granted for Client or Attorney Error §12.13

b. Relief Must Be Granted for Attorney Error §12.14

c. Time Limitations on Bringing Motion Under CCP §473 §12.15

d. Showing in Support of Motion; Declaration §12.16

e. Excuses for Default; Examples §12.17

(1) Mistake of Fact §12.18

(2) Attorney's Mistake of Law §12.19

(3) Excusable Neglect §12.20

(4) Fraud §12.21

2. Clerical Mistakes; Vacating Void Judgments (CCP §473, ¶4) §12.22

a. Judgment Void on Its Face §12.23

b. Judgment Void in Fact, But Not Void on Its Face §12.24

3. When Service of Summons Does Not Result in Actual Notice to Party (CCP §473.5) §12.25

4. Motion or Separate Action in Equity Available to Vacate Judgment on Ground of Fraud or Mistake §12.26

5. Erroneously Entered Default or Default Judgment §12.27

6. Examples of Erroneously Entered Defaults and Default Judgments §12.28

IX. WHEN WRIT OF EXECUTION HAS BEEN ISSUED §12.29

X. FORMS: MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT

A. Form: Notice of Motion to Set Aside Default and Default Judgment; Supporting Memorandum §12.30

B. Form: Declaration Supporting Motion to Set Aside Default and Default Judgment §12.30A

XI. ORDER SETTING ASIDE DEFAULT AND DEFAULT JUDGMENT §12.31

XII. FORM: ORDER SETTING ASIDE DEFAULT AND DEFAULT JUDGMENT §12.32

XIII. EFFECT OF ORDER SETTING ASIDE DEFAULT AND DEFAULT JUDGMENT §12.33

Back to Top

Demurring and Moving to Strike

I. ATTACKING LEGAL SUFFICIENCY OF COMPLAINT §13.1

II. THE DEMURRER §13.2

A. Grounds for General Demurrer §13.3

B. Grounds for Special Demurrer §13.4

C. Sustaining Demurrer With or Without Leave to Amend §13.5

D. Demurrer Permitted on Grounds of No Jurisdiction Over Subject Matter §13.6

E. Effect of Another Pending Unlawful Detainer Action §13.7

F. Parties

1. Improper Defendant §13.8

2. Improper Plaintiff §13.9

G. Venue and Trial Court Location §13.10

H. Description of Premises With Reasonable Certainty §13.11

I. Existence of Landlord-Tenant Relationship §13.12

J. Notice of Termination

1. Alleging Service of Notice §13.13

2. Alleging Proper Notice §13.13A

3. Alleging Contents of Notice §13.14

a. Default in Rent §13.15

b. Breach of Covenant Other Than Nonpayment of Rent §13.16

c. Subletting, Waste, Nuisance, or Use for Unlawful Purpose §13.17

d. Expiration of Term

(1) Fixed Term §13.18

(2) Periodic Tenancy §13.19

K. Tenant Continues in Possession §13.20

L. Fraud, Force, or Violence §13.21

M. Compliance With Implied Warranty of Habitability §13.22

N. Statute of Limitations §13.23

O. Checklist: Demurrable Defects in Complaint §13.23A

P. Form: Demurrer to Complaint §13.24

III. MOTION TO STRIKE §13.25

A. Irrelevant, False, or Improper Allegations §13.26

B. Defects Not Subject to Demurrer §13.27

C. Improper Request for Damages §13.28

D. Necessary Allegations for Finding Statutory Damages §13.29

E. Rental Value of Premises After Suit Brought §13.30

F. Attorney Fee Provision in Lease §13.31

G. Verification §13.32

H. Failure to State “§1161a” in Caption §13.32A

I. Sample Form: Motion to Strike §13.33

IV. PROCEDURE FOR DEMURRER AND MOTION TO STRIKE

A. Answer May Be Filed With Demurrer §13.34

B. Timing of Hearing on Demurrer and Motion to Strike §13.35

C. Supporting Memorandum §13.36

D. Effect of Overruling of Demurrer §13.37

E. Frivolous Demurrers §13.38

F. Motion to Strike §13.39

V. FILING FEES §13.40

VI. EXTENSION OF TIME TO PLEAD §13.41

VII. MOTION FOR JUDGMENT ON PLEADINGS §13.42

VIII. SPECIAL (ANTI-SLAPP) MOTION TO STRIKE §13.43

Back to Top

I. RIGHT TO ANSWER §14.1

II. USE OF JUDICIAL COUNCIL FORMS §14.2

III. TIME TO ANSWER §14.3

IV. GOOD CAUSE TO EXTEND TIME TO ANSWER

A. Length of Extension §14.4

B. Steps Tenant Should Take to Get Extension of Time to File Answer §14.5

V. DENIALS §14.6

VI. BASES FOR DENIALS §14.7

VII. AFFIRMATIVE DEFENSES §14.8

A. Priority of Title After Foreclosure Sale §14.9

B. Implied Warranty of Habitability and Retaliatory Eviction §14.10

C. “Equitable” Defenses §14.11

D. Laches §14.12

E. Other Affirmative Defenses §14.13

F. Illegal Discrimination §14.13A

1. Violation of Unruh Civil Rights Act as Defense §14.14

a. Application of Unruh Act to Landlords §14.15

b. Prohibition of Arbitrary Discrimination Under Unruh Act §14.16

c. Minimum Income Policy §14.17

d. Examples of Reach of Unruh Act §14.18

2. Discrimination Based on Age

a. Discrimination Against Families With Children §14.19

b. Senior Citizen Housing §14.20

3. Discrimination Under Federal Fair Housing Acts §14.21

4. Discrimination Under California Fair Employment and Housing Act §14.22

5. Family Day Care Home §14.22A

6. Immigration Status §14.22B

7. Domestic Violence §14.22C

G. Other Violations of Housing Statutes and Ordinances

1. Certificate of Occupancy Violations §14.23

2. Landlord's Duty to Repair; "Repair and Deduct" Statutes (CC §§1941–1942.5) §14.24

3. Violation of Tenantability Statutes (CC §1942.4) §14.24A

a. Indications That Premises Are Untenantable §14.25

b. Conditions Rebuttably Presumed to Breach Habitability Requirements §14.26

c. If Tenant Causes Condition of Premises §14.27

d. Tenant's Remedies §14.28

e. Waiver of Tenant's Rights §14.29

4. Statutory Violations Under Rent Control §14.30

H. Fraud §14.31

I. Adhesion Contract §14.32

J. Waiver and Estoppel §14.33

K. Express Promise to Repair §14.34

1. Dependent or Independent Covenants §14.35

2. Oral Promise Made Before Written Lease §14.36

a. Consideration §14.37

b. Statute of Frauds §14.38

c. Parol Evidence Rule as Applied to Leases §14.39

d. Dependency of Covenants §14.40

3. Tenant's Arguments for Admission of Oral Promise Made Before or at Time of Execution of Written Agreement §14.41

4. Oral Promise Made Before Entry Into Oral Lease §14.42

5. Promise Made Subsequent to Lease §14.43

6. When Tenant Makes Promise to Repair §14.43A

L. Implied Covenant of Good Faith §14.44

M. Actual Partial Eviction §14.45

N. Notice Served More Than One Year After Rent Due §14.46

O. Breach of Covenant of Quiet Enjoyment §14.47

P. Offsets §14.48

Q. When Tenant Has Vacated Premises §14.49

VII. VERIFICATION §14.50

VIII. FILING ANSWER AFTER RULING ON DEMURRER §14.51

IX. EXTENSION OF TIME TO PLEAD §14.52

X. AMENDING ANSWER §14.53

XI. CROSS-COMPLAINTS §14.54

A. When Tenant Has Vacated Premises §14.55

B. When Landlord Fails to Challenge Cross-Complaint §14.56

C. Procedure §14.57

D. Form: Answer—Unlawful Detainer (Judicial Council Form UD-105) [Deleted] §14.58

Back to Top

15

Affirmative Defenses—Implied Warranty of Habitability

I. INTRODUCTION

A. Adoption of Implied Warranty of Habitability: Hinson v Delis; Green v Superior Court §15.1

B. Definition of Implied Warranty of Habitability §15.2

C. Supreme Court Rationale in Adopting Implied Warranty Doctrine §15.3

D. Landlord May Be Held in Breach Even if Another Is Responsible

for Defect §15.4

E. Time Within Which Landlord Must Correct Defects §15.5

II. USES OF IMPLIED WARRANTY OF HABITABILITY DOCTRINE §15.6

A. When Warranty Used in Suit for Affirmative Damages and Other Relief §15.7

B. Procedure When Using Warranty as Defense in Unlawful Detainer Action §15.8

C. Effect of Tenant Prevailing at Trial on Warranty Defense §15.9

III. ESTABLISHING BREACH OF WARRANTY

A. Facilities Covered §15.10

1. Government-Owned Housing §15.11

2. Portions of Premises Covered by Warranty of Habitability §15.12

B. Housing and Building Code Violations

1. Sources of Housing and Building Code Standards §15.13

2. Examples of Housing and Building Code Violations §15.13A

3. Jury Instructions Relating to Code Violations §15.14

4. Defects Actionable Under Implied Warranty or Negligence But Not Covered by Housing and Building Codes §15.15

C. Failure to Protect Tenants From Criminal Acts §15.16

1. Determining Whether Landlord Has a Duty to Protect Against Criminal Acts §15.17

2. Examples of Duty Not Found or Duty Held Not Breached §15.18

3. Examples of Duty Found or Landlord Held in Breach §15.19

4. Breach of Duty Raised by Allegation of Breach of Implied Warranty §15.20

5. Level of Security at Time Tenant Moves Into Premises §15.21

6. Proving Causation §15.21A

D. Seriousness of Defects

1. Requirement That Defects Be Serious §15.22

2. Examples of Defects Held Serious Enough to Constitute Breach of Implied Warranty §15.23

3. Evidence of Breach §15.24

a. Proving That Existing Conditions Violate Code §15.25

b. Presumption of Breach of Habitability Standards §15.26

c. Viewing the Premises §15.27

E. Special Problems

1. Premises Uninhabitable at Inception of Tenancy §15.28

2. Premises Become Uninhabitable After Tenant Is Served With Notice of Termination §15.29

3. Waiver of Warranty §15.30

4. Defect Caused by Tenant’s Wrongful Action §15.31

5. Defects Caused by Acts of Nature §15.32

IV. NOTICE OF DEFECT §15.33

V. REASONABLE TIME TO REPAIR NOT REQUIRED §15.34

VI. PROTECTIVE ORDERS §15.35

A. When Protective Orders Are Appropriate §15.36

B. Advantages to Tenant of Voluntary Deposit Into Attorney's Trust Account §15.37

VII. DAMAGES FOR BREACH OF IMPLIED WARRANTY §15.38

A. Relief Based on Affirmative Defense of Breach of Implied Warranty §15.39

1. Period During Which Damages Accrue §15.40

2. Tenant Must Pay "Reasonable Rent" Even if Warranty Breached §15.41

3. Various Approaches to Measuring Damages §15.42

a. "Difference-in-Value" Approach §15.43

b. "Discomfort-and-Annoyance" Approach §15.44

c. "Percentage-Reduction-of-Use" Approach §15.45

4. Limits on Amount by Which Rent May Be Reduced §15.46

5. Amount of Rent Reduction in Subsidized Housing §15.46A

6. Nominal Damage Awards §15.47

B. Actions Brought Under CC §1942.4 §15.48

C. Actions Based on Tort of Breach of Implied Warranty §15.49

D. Hybrid View of Warranty of Habitability—Contract and Tort §15.50

VIII. EFFECT OF RECENT PURCHASE OF PROPERTY BY LANDLORD §15.51

IX. LACK OF CERTIFICATE OF OCCUPANCY §15.52

Back to Top

Affirmative Defenses—Retaliatory Evictions

I. LEGAL FRAMEWORK §16.1

II. SEVERAL SOURCES OF LAW MAY APPLY SIMULTANEOUSLY §16.2

A. Civil Code §1942.5

1. Tenants' Actions on Habitability (CC §1942.5(a))

a. Protected Parties and Acts §16.3

b. Limitations on Protection

(1) Tenant Cannot Be in Default in Payment of Rent §16.4

(2) Tenant May Not Invoke CC §1942.5(a) More Than Once a Year §16.5

(3) Protective Period Under CC §1942.5 Limited to 180 Days §16.6

(4) Defense Unavailable in Ellis Act Evictions §16.6A

2. Tenant Union Activity (CC §1942.5(c)) §16.7

3. Exercise of "Rights Under Law" (CC §1942.5(c)) §16.8

a. Additional Examples of Acts Protected by CC §1942.5(c) §16.9

b. Examples of Acts Protected Before Enactment of CC §1942.5 §16.10

4. Tenant Cannot Waive Rights (CC §1942.5(d)) §16.11

5. Notice and Burden of Proof (CC §1942.5(e)) §16.12

6. Procedure for Proving Retaliation When Landlord Includes Grounds in Notice (CC §1942.5(e)) §16.13

7. Remedies (CC §1942.5(f)–(g)); Punitive Damages and Attorney Fees §16.14

8. Remedies Not Exclusive (CC §1942.5(h)) §16.15

B. Public Policy; Retaliation for Refusal to Commit Crime Improper §16.16

C. Victims of Domestic Violence §16.16A

D. Other Statutory Rights

1. Retaliation Based on Tenant’s Assertion of Statutory Rights; Implied Protection §16.17

2. Retaliation Based on Tenant’s Assertion of Statutory Rights; Express Statutory Protection §16.18

3. Common Law §16.19

4. Local Rent Control Ordinances §16.20

5. Constitution §16.21

III. LIMITATIONS ON RETALIATORY EVICTION DEFENSE §16.21A

IV. PROOF OF RETALIATORY MOTIVE

A. Sole or Dominant Motive §16.22

B. Treatment of Mixed Motives in Labor Law §16.23

C. Presumptions and Burden of Proof §16.24

D. Evidence §16.25

E. Analogies Drawn From Labor Law to Prove Retaliatory Motive §16.26

F. Form: Affirmative Defense on Ground of Retaliatory Eviction §16.27

Back to Top

17

Special Considerations Governing Evictions in Rent-Controlled Cities

Myron Moskovitz

Sonya Bekoff Molho

Steven A. MacDonald

Denise McGranahan

Sallyann Molloy

I. SCOPE OF LOCAL RENT CONTROL ORDINANCES

A. Local Control Versus State Preemption §17.1

B. Statewide Vacancy Decontrol

1. Existing Housing §17.1A

a. Phase-In Periods §17.1B

b. Lease Restrictions on Subletting Allowed §17.1C

c. Exceptions to Preemptive Effect §17.1D

2. New Construction and Single-Unit Exclusions §17.1E

a. Phase-In Periods for Condominiums and Single-Family Homes §17.1F

b. Exceptions to Preemptive Effect §17.1G

II. PRACTICE CONSIDERATIONS IN RENT CONTROL JURISDICTIONS §17.2

III. CITIES SUBJECT TO RENT CONTROL §17.3

IV. EVICTIONS AND RENT CONTROL

A. Overview §17.4

B. Just Cause for Eviction §17.5

1. Failure to Pay Rent §17.6

2. Failure to Cure Violation of Rental Agreement §17.7

3. Conduct Constituting a Nuisance §17.8

4. Use of Premises for Illegal Purpose §17.9

5. Refusal to Permit Landlord Access to Premises §17.10

6. Refusal to Execute New Lease §17.11

7. Subletting §17.12

8. Violation of Lease Restricting Occupancy §17.12A

a. Exception: Relative or Domestic Partner of Tenant §17.12B

b. Exception: Surviving Relative of Deceased Tenant §17.12C

c. Exception: Landlord Knowingly Accepts Rent From Occupant §17.12D

9. Rehabilitation of Unit §17.13

10. Demolition or Conversion of Units—Ellis Act Evictions §17.14

a. Constitutional Challenges; Preemption §17.14A

b. Effect of Other State Laws §17.14B

11. Occupancy by Owner or Owner’s Relative §17.15

a. Representing Tenants in Evictions for Owner Occupancy §17.16

b. Good Faith in Owner-Occupancy Evictions §17.17

12. Grounds Not Stated in Ordinance: Termination of Manager; Foreclosure §17.18

13. Failure to Use Premises as Principal Residence §17.18A

C. Notice and Pleading Requirements §17.19

D. Burdens of Proof and Presumptions §17.20

E. Defenses to Evictions §17.21

F. Statute of Limitations §17.22

G. Damages for Unlawful Evictions §17.23

H. Attorney Fees §17.24

V. NEGOTIATING AND DEFENDING ELLIS ACT EVICTIONS

A. Preliminary Considerations

1. Scope of Ellis Act §17.25

2. Representing Organized Tenants §17.26

3. Factual Investigation

a. Review Notices and Status of All Affected Units §17.27

b. Explain Ellis Process to Client §17.28

c. Ascertain Client’s Age, Health, and Economic Status §17.29

d. Investigate Unexpired Leases §17.30

B. Relocation Benefits §17.31

1. Benefits Available for Displaced Tenants Regardless of Income §17.32

2. Landlord’s Misrepresentation of Availability of Benefits §17.33

3. Documentation Proving Eligibility §17.34

4. Other Issues Affecting Payment of Benefits

a. Timely Payment §17.35

b. Waiver of Relocation Fees §17.36

c. One Fee per Unit §17.37

d. Services in Lieu of Fees §17.38

e. Failure to Pay Fees §17.39

C. Technical Defenses Based on Notice and Filing Requirements §17.40

D. Unexpired Leases §17.41

E. Tenant’s Options Regarding Unlawful Detainer Action Under Ellis Act

1. Answering the Complaint §17.42

2. Retaliatory Eviction Defense Limited §17.43

3. Failure to Take All Units Off Market §17.44

4. Other Possible Defenses §17.45

F. Discovering Violations After Eviction

1. Use of Ellis Act to Move Out Long-Term Tenants §17.46

2. Use of Post-Ellis Property for Home Ownership §17.47

a. Effect of State and Local Subdivision Laws §17.48

b. Effect of State and Local Laws Regulating Apartment Conversions §17.49

Back to Top

18

Special Considerations Governing Evictions From Federally Assisted Housing

Catherine M. Bishop

Nancy Ann Palandati

Deborah A. Collins

I. “FEDERALLY ASSISTED LOW-INCOME HOUSING” DEFINED §18.1

II. ASCERTAINING WHETHER TENANT LIVES IN FEDERALLY ASSISTED HOUSING AND, IF SO, WHAT KIND §18.2

III. TYPES OF FEDERAL HOUSING PROGRAMS §18.3

A. Public Housing §18.3A

B. Section 8 §18.3B

C. HUD-Assisted and -Subsidized Housing §18.3C

D. HUD-Assisted Units Threatened With Prepayment of Mortgage or Opt-Out of Section 8 Contract §18.3D

E. Rural Housing Service (RHS) Subsidized Rental Housing §18.3E

F. Low-Income Housing Tax Credit (LIHTC) §18.3F

G. Other State and Local Programs §18.3G

IV. SUBSTANTIVE RIGHTS IN EVICTION ACTIONS

A. Application of State Law §18.4

B. Evictions After Foreclosure

1. Preemptive Measures Governing Evictions §18.4A

2. Postponing Sale of Multifamily Residential Buildings §18.4B

C. Good Cause Requirement §18.5

1. Public Housing §18.6

2. Project-Based Section 8 and HUD-Assisted and -Subsidized Housing §18.7

3. Section 8 Housing Choice Voucher Program §18.8

4. Rural Housing Service (RHS) Rental Housing §18.9

5. State and Local Housing Programs for Low-Income Families §18.10

6. Other Housing Programs for Low-Income Families §18.11

D. Facts Constituting Good Cause §18.12

1. Failure to Pay Rent §18.13

2. Serious Tenant Wrongdoing, Including Criminal Activity

a. Violation of Lease or State or Federal Law §18.14

b. Drug or Criminal Activity

(1) Statutory Authorization and Standards for Eviction §18.15

(2) Federal Standards Upheld in Rucker §18.16

(3) When State Law Standards Apply §18.16A

(4) Aftermath of Rucker; Unresolved Issues §18.17

(5) Permission to Obtain Criminal Records, Drug Treatment Information §18.17A

c. Exception: Victims of Domestic Violence Protected §18.17B

3. Violation of Program Regulations §18.18

4. Examples of Improper Grounds for Evicting Tenant §18.19

E. Defending Evictions

1. Project Owner’s Abuse of Power §18.20

2. Defensive Strategies in PHA Evictions §18.20A

3. Bankruptcy Discharge of Delinquent Rent in Public or Subsidized Housing §18.20B

V. EVICTION PROCEDURES: NOTICE AND ADMINISTRATIVE HEARING OR MEETING §18.21

A. Notice Requirements §18.22

B. Pretermination Grievance Hearing or Meeting §18.23

C. Notice and Hearing Required Before Forfeiture Under Federal Antidrug Statute §18.24

D. Relief From Forfeiture §18.25

VI. DAMAGES MAY BE AWARDED FOR WRONGFUL EVICTION FROM FEDERALLY ASSISTED HOUSING §18.26

VII. ENJOINING EVICTIONS FROM FEDERALLY ASSISTED HOUSING §18.27

Back to Top

19

Special Considerations Governing Evictions in Commercial Tenancies

Myron Moskovitz

Clifford R. Horner

I. OVERVIEW OF UNLAWFUL DETAINER IN COMMERCIAL TENANCIES §19.1

II. THREE-DAY NOTICE TO PAY RENT OR QUIT

A. Lease Provisions May Affect Eviction Procedures §19.2

B. Statutory Requirements

1. Estimated Rent (CCP §1161.1) §19.3

2. When Rent Is Not Estimated §19.4

3. Service Requirements §19.5

4. Landlord’s Acceptance of Partial Tender of Rent §19.6

III. THREE-DAY NOTICE FOR VIOLATION OF COVENANT OTHER THAN PAYMENT OF RENT §19.7

A. Covenants Restricting Assignments

1. Common Law Rules §19.8

2. Statutory Law §19.9

B. Covenants Regarding Tenant Improvements §19.9A

C. Covenants Restricting Change in Use §19.10

IV. TERMINATION NOTICES FOLLOWING FORECLOSURE §19.10A

V. TERMINATION UNDER EXPRESS LEASE PROVISIONS §19.10B

VI. DEFENDING EVICTION BY ASSERTING BREACH OF LEASE BY LANDLORD

A. Covenant to Repair; Implied Warranty of Habitability

1. Dependent Versus Independent Covenants §19.11

2. Argument Favoring Adoption of Dependent Covenant Doctrine in Commercial Leases §19.12

a. Minimize Litigation §19.13

b. Eliminate Unfair Burdens on Tenant §19.14

c. Protect Tenant’s Right to Pursue Livelihood §19.15

d. No Impact on Summary Nature of Unlawful Detainer §19.16

e. Out-of-State Decisions Favor Interdependent Covenants §19.17

3. Effect of Toxic Mold Legislation §19.17A

B. Covenant of Quiet Enjoyment §19.18

C. Other Contractual Defenses §19.18A

D. Implied Warranty of Fitness §19.19

E. Implied Covenant of Good Faith §19.20

1. Duty to Maintain Third Party Leases §19.21

2. Sublessor Required to Exercise Option to Extend Master Lease §19.22

3. “No Compete” Covenant Applied to Expansion of Shopping Center §19.23

4. Good Faith Covenant Applied in Favor of Landlord §19.24

VII. NONCONTRACTUAL DEFENSES TO COMMERCIAL EVICTION ACTIONS

A. Retaliatory Eviction §19.25

B. Good Cause to Terminate Petroleum Distributorship §19.26

C. Equitable Defenses §19.27

VIII. LANDLORD'S RIGHT OF ENTRY PENDING EVICTION §19.28

Back to Top

20

Effect of Sale of Property on Unlawful Detainer Proceedings

I. EFFECT OF SALE OF PROPERTY ON UNLAWFUL DETAINER §20.1

A. Sale Before Eviction Action Is Begun §20.2

B. Sale After Eviction Action Has Begun §20.3

II. EVICTING AFTER SALE UNDER CCP §1161a §20.4

A. Use of 30-Day Notice on Residential Owner's Tenant or 60-Day or 90-Day Notice After Foreclosure §20.5

1. When 60-Day Notice Applies §20.6

2. Additional Preforeclosure Notice of Sale §20.7

3. Postponing Sale of Multifamily Residential Buildings §20.7A

4. When 90-Day Notice Applies §20.8

B. Litigating Title in Unlawful Detainer Action §20.9

C. Effect of Local Eviction Control Ordinances §20.10

D. Effect of Section 8 Eviction Controls §20.11

E. Postforeclosure Bank Eviction Policies §20.12

F. Defending Postforeclosure Evictions: Priority of Title, Title Dispute, Improper Foreclosure, or Improper Notice Following Foreclosure §20.13

III. UTILITY CUTOFFS §20.14

Back to Top

21

Effect of Filing Bankruptcy on Proceedings in Unlawful Detainer

I. EFFECT OF TENANT FILING BANKRUPTCY

A. Automatic Stay on Evictions §21.1

B. Exceptions to Stay for Residential Tenancies

1. After Entry of Judgment for Eviction §21.1A

2. When Eviction Based on Endangerment of Property or Illegal Use of Controlled Substance §21.1B

C. Significant Changes Under 2005 Act §21.1C

II. LANDLORD MAY SEEK RELIEF FROM AUTOMATIC STAY §21.2

III. PENALTY FOR IMPROPER FILING OF BANKRUPTCY §21.3

IV. LEASE CLAUSES PURPORTING TO TERMINATE LEASE ON FILING OF BANKRUPTCY §21.4

V. TERMINATION OF UTILITIES AND OTHER SERVICES §21.5

VI. ASSUMPTION OF LEASE BY TRUSTEE §21.6

VII. SECURITY DEPOSITS §21.7

VIII. DISADVANTAGES TO TENANT OF FILING FOR BANKRUPTCY §21.8

IX. FILING PETITION IN BANKRUPTCY AS TACTIC IN UNLAWFUL DETAINER ACTION §21.9

Back to Top

Summary Judgment

I. PURPOSE OF MOTION FOR SUMMARY JUDGMENT §22.1

II. TIMING OF MOTION §22.2

III. BURDEN OF PROOF §22.2A

IV. FACTUAL BASES FOR TENANT'S MOTION FOR SUMMARY JUDGMENT §22.3

V. MOVING PARTY'S SUPPORTING PAPERS §22.4

VI. OPPOSING PARTY'S COUNTERDECLARATIONS; ORDERS §22.5

VII. SUMMARY ADJUDICATION OF ISSUES §22.6

Back to Top

23

Discovery

I. PURPOSES OF DISCOVERY §23.1

II. STATUTORY METHODS OF DISCOVERY §23.2

III. AVAILABILITY OF DISCOVERY IN UNLAWFUL DETAINER §23.3

IV. DEFENSE STRATEGY SHOULD INCLUDE PLAN FOR DISCOVERY §23.4

V. FORMAL AND INFORMAL DISCOVERY METHODS §23.5

VI. FORMULATING A DISCOVERY PLAN

A. When to Make and Implement Plan §23.6

B. Coordinating Various Discovery Techniques §23.7

C. Timeline for Initiating Tenant Discovery Directed to Landlord §23.8

D. Actions to Take if Discovery Cannot Be Completed Before Trial Date §23.9

VII. PURSUING DISCOVERY BEFORE ACTION FILED §23.10

A. Methods of Discovery Available Before Action Is Filed §23.11

B. Procedure for Pursuing Discovery Before Action Is Filed §23.12

C. Usefulness of Pursuing Discovery Before Action Is Filed §23.13

VIII. DISCOVERY AFTER SUMMONS AND COMPLAINT ARE SERVED §23.14

A. Time Limits on Responding to Discovery Requests §23.15

B. Preventing Setting of Trial Date Before Discovery Is Complete §23.16

C. Petitioning for Writ of Mandate if Court Refuses to Extend Trial Date §23.17

IX. METHODS OF DISCOVERY §23.18

A. Oral Depositions §23.19

1. Usefulness of Depositions §23.20

2. Expense of Depositions §23.21

3. Procedure for Oral Depositions

a. When Deposition May Be Taken §23.22

b. Setting Depositions of Parties §23.23

c. Setting Depositions of Nonparties §23.24

d. Witness and Mileage Fees §23.25

e. Procedures at Deposition §23.26

f. Inspection of Documents at Deposition §23.27

g. Reviewing, Correcting, and Approving Deposition §23.28

B. Written Interrogatories §23.29

1. Usefulness of Written Interrogatories §23.30

2. Disadvantages of Written Interrogatories §23.31

3. Limit on Number of Interrogatories That May Be Propounded §23.32

4. Form: Declaration for Additional Discovery §23.33

5. Procedure for Propounding Written Interrogatories §23.34

C. Pretrial Demand for Production of Documents or Inspection §23.35

1. Usefulness of Demand for Production §23.36

2. Introduction Into Evidence of Documents Produced §23.37

3. Tactical Considerations in Requesting Production §23.38

4. Protective Orders Against Request for Production §23.39

D. Requests for Admissions §23.40

1. Usefulness of Requests for Admissions §23.41

2. Procedure for Requests for Admissions §23.42

3. Form: Declaration in Support of Request for Additional Admissions §23.43

4. Effect of Failure to Respond to Request for Admissions §23.44

5. Effect of Failure to Admit Fact Later Found True §23.45

6. Requests for Admissions May Not Be Combined With Other Discovery Requests §23.46

7. Effect of Admission Made in Response to Request §23.47

8. Admissions and Responses Are Not Filed But Retained by

Parties §23.48

X. SANCTIONS FOR REFUSAL TO MAKE DISCOVERY §23.49

A. Categories of Sanctions That May Be Imposed §23.50

B. What Constitutes Misuse of Discovery Process §23.51

C. Specific Sanctions That Court May Impose §23.52

Back to Top

24

Rights of Occupants Not Named in Lease

I. OCCUPANTS WHO ARE NOT NAMED IN LEASE §24.1

II. PREJUDGMENT CLAIM OF RIGHT TO POSSESSION §24.2

A. Service of Prejudgment Claim to Right to Possession Form

1. Service by Marshal, Sheriff, or Process Server §24.3

2. Time of Service §24.4

3. Service on Occupants Other Than Tenant or Subtenant

§24.5

B. Effect of Proper Service by Landlord of Prejudgment Claim Form §24.6

C. Effect of Inadequate Service by Landlord of Prejudgment Claim Form §24.7

D. Judicial Council Form CP10.5: Prejudgment Claim of Right to Possession §24.8

III. POSTJUDGMENT CLAIM OF RIGHT TO POSSESSION §24.9

A. Removal of Occupant by Sheriff or Marshal §24.10

B. Procedure by Occupant in Making Postjudgment Claim of Right to Possession §24.11

C. Judicial Council Form CP10: Claim of Right to Possession and Notice of Hearing §24.12

IV. HEARING ON CLAIM OF RIGHT TO POSSESSION §24.13

V. PROCEDURE AT HEARING ON CLAIM OF RIGHT TO POSSESSION §24.14

VI. PROCEEDING WITH ENFORCEMENT OF WRIT OF POSSESSION §24.15

Back to Top

25

Trial

I. SETTING CASE FOR TRIAL

A. Request and Counter-Request to Set Trial §25.1

B. Setting Date for Trial §25.2

C. Effects of Local Practices §25.3

1. Trial by Temporary Judge §25.4

2. Procedure After Trial Date Is Set §25.5

D. Resetting Trial Date §25.6

1. Procedure If Parties Do Not Agree on New Trial Date §25.7

2. Determining Whether Moving Party Has Shown Good Cause §25.8

3. Determining Whether There Is Reasonable Probability Plaintiff Will Prevail at Trial §25.9

4. Determining Damages Landlord Might Suffer §25.10

5. Reduction of Damages Based on Diminution of Value or Setoff §25.11

6. Order to Deposit Potential Damages §25.12

7. Advancing Trial Date on Tenant's Failure to Make Deposit §25.13

8. Costs of Escrow Recoverable by Prevailing Party §25.14

9. Distribution of Funds Held in Escrow After Trial §25.15

II. IF TENANT VACATES PREMISES BEFORE TRIAL §25.16

III. PRETRIAL CONFERENCE §25.17

IV. RIGHT TO JURY TRIAL §25.18

A. Jury Instructions §25.19

B. Waiver of Jury Trial

1. Bases for Waiver §25.20

2. Requesting Jury Trial After Waiver §25.21

3. Tenant's Right to Jury Trial on Equitable Issues §25.22

a. Examples of Legal Issues §25.23

b. Examples of Equitable Defenses §25.24

C. Jury Verdicts

1. General and Special Verdicts §25.24A

2. Judgment Based on Jury Verdict §25.24B

V. DISQUALIFYING JUDGE §25.25

A. Challenge for Cause (CCP §170.1) §25.26

1. Conditions That May Not Be Used as Grounds to Disqualify Judge §25.27

2. Bias or Prejudice §25.28

3. Procedure for Disqualification §25.29

B. Peremptory Challenges (CCP §170.6)

1. Grounds for Challenge §25.30

2. Procedure for Peremptory Challenges §25.31

3. Time Limits for Moving to Challenge §25.32

4. Effect of Challenge §25.33

C. Tactical Considerations §25.34

VI. SUBPOENAS

A. Subpoenas for Witnesses §25.35

B. Subpoena Not Necessary to Require Attendance of Party or Agent §25.36

C. Service of Subpoena §25.37

D. Fees for Appearing in Court in Response to Subpoena §25.38

E. Subpoena Duces Tecum (Books and Papers) §25.39

1. Service of Subpoena Duces Tecum; Affidavit of Good Cause

Necessary §25.40

2. Fees for Appearing in Court in Response to Subpoena Duces Tecum §25.41

3. Subpoena Duces Tecum Not Necessary for Party §25.42

F. Penalties for Disobeying Subpoena §25.43

VII. EVIDENCE PROBLEMS

A. Prima Facie Case; Nonsuit §25.44

B. Proof of Tenant’s Possession §25.45

C. Proof of Service of Notice §25.46

D. Proof of Rent Due §25.47

E. Judicial Notice §25.48

F. Use of Books and Records §25.49

G. Laying Foundation for Admission of Business Record §25.50

H. Proof of Damages §25.51

I. Waiver of Rent During Trial §25.52

J. Proving Retaliatory Eviction §25.53

1. Strength of Retaliatory Motive §25.54

2. Evidence of “Just Cause” to Evict §25.55

3. Evidence of Retaliatory Motive

a. Evidence Inferred by Conduct §25.56

b. Indirect Evidence §25.57

K. Fees for Appointment of Interpreter §25.58

VIII. TRIAL BRIEFS §25.59

IX. CONTINUANCES §25.60

A. Grounds for Continuance §25.61

1. Unavailability of Counsel §25.62

2. Unavailability of Party §25.63

3. Unavailability of Witness §25.64

4. Other Statutory Grounds for Granting Continuance §25.65

5. Unexpected Testimony §25.66

B. Procedure for Obtaining Continuance §25.67

1. Good Cause Required §25.67A

2. Stipulation for Continuance §25.67B

3. Conditions for Obtaining Continuance §25.67C

4. Appealability of Order Denying Continuance §25.67D

X. DEFAULTS AT TRIAL §25.67E

XI. CONFORMING PLEADINGS TO PROOF

A. General Law for Ordinary Civil Actions §25.68

B. Special Law for Unlawful Detainer Complaints

1. Amendment Based on Trial Evidence §25.68A

2. Amendments Before Trial Excluded §25.68B

3. Permissible Scope of Amendments §25.68C

C. Amended Versus Supplemental Complaint §25.68D

XII. STATEMENT OF DECISION §25.69

Back to Top

Judgment

I. JUDGMENTS IN UNLAWFUL DETAINER ACTIONS §26.1

II. CONDITIONING JUDGMENT FOR TENANT ON PAYMENT OF RENT §26.2

III. TENANT MUST BE IN POSSESSION §26.3

IV. WHAT COURT CAN AWARD

A. Judgment Can Grant Possession of Premises §26.4

B. “Rent” and “Damages” §26.5

1. Determining Whether Amount Due Is Rent or Damages; Period Covered §26.6

2. Rent §26.7

3. Apportionment of Rent §26.8

4. Damages

a. Damages Occurring Before Holdover §26.9

b. Reasonable Rental Value During Holdover §26.10

c. Damages Against Subtenant §26.11

d. Damages After Judgment §26.12

e. Statutory Damages for Malicious Holdover §26.13

C. Forfeiture §26.14

D. Notice May Specify Election to Declare Forfeiture §26.15

E. Interest May Be Awarded §26.16

F. Costs May Be Awarded §26.17

G. Attorney Fees Authorized by Lease or Statute §26.18

1. Reciprocity of Attorney Fee Provision §26.19

2. Award of Fees Under Invalid Rental Agreement §26.20

3. Prevailing Party §26.21

4. Entitlement to Attorney Fees on Tender and Deposit of Amount Owed §26.22

5. Prevailing Party When Tenant Raises Habitability as Affirmative Defense §26.23

6. Size of Fee Award; Local Fee Schedules §26.24

7. Fees Awardable After Settlement Offer Rejected §26.25

8. Fees Awardable Beyond Court's Jurisdictional Limit §26.26

9. Fees Awardable to Public Interest Attorneys §26.27

10. Fees Awardable for All Issues Argued §26.28

11. Attorney Fees Payable to Party—Not to Attorney §26.29

12. Attorney Fees Awardable as Sanctions Regardless of Lease Provision §26.30

13. Effect of Voluntary Dismissal §26.31

14. Fees Awardable for Enforcement of Right Important to Public Interest §26.32

15. Procedures for Requesting Fees §26.33

16. Related Statutes Providing for Award of Attorney Fees §26.34

H. Limitation on Award for Judgments in Municipal Court of Less Than $10,000 §26.35

I. Witness Fees May Be Awarded §26.36

J. Costs of Execution of Judgment May Be Recovered §26.37

V. EFFECT OF JUDGMENT ON CONSUMER CREDIT REPORTING §26.38

VI. RES JUDICATA AND COLLATERAL ESTOPPEL EFFECT OF JUDGMENT §26.38A

VII. UNLAWFUL DETAINER JUDGMENT FORMS

A. Form: Order for Judgment for Defendant Conditioned on Payment of Rent After Trial (Warranty of Habitability) §26.39

B. Form: Judgment—Unlawful Detainer (Judicial Council Form UD-110) §26.40

C. Form: Judgment—Unlawful Detainer Attachment (Judicial Council Form UD-110S) §26.41

D. Form: Stipulation for Entry of Judgment (Unlawful Detainer) (Judicial Council Form UD-115) §26.42

Back to Top

27

Posttrial Motions

I. POSTTRIAL MOTIONS COVERED §27.1

II. FIVE-DAY STATUTORY STAY OF EXECUTION (FOR APPLICATION FOR RESTORATION OF POSSESSION) §27.2

III. DISCRETIONARY STAY OF EXECUTION

A. Pending Hearing on Posttrial Motions §27.3

B. Temporary Stay Based on Hardship §27.4

C. Form: Ex Parte Application for Stay of Execution §27.5

D. Form: Memorandum in Support of Ex Parte Application for Stay of Execution §27.6

IV. MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT §27.7

A. Grounds for Judgment Notwithstanding Verdict §27.8

B. Procedure for Making Notice of Motion §27.9

C. Time of Ruling on Motion §27.10

D. Form: Notice of Motion for Judgment Notwithstanding Verdict §27.11

E. Form: Order Granting or Denying Judgment Notwithstanding Verdict §27.12

V. MOTION FOR NEW TRIAL §27.13

A. Grounds for Motion for New Trial §27.14

B. Court’s Power to Vacate or Modify Judgment §27.15

C. Notice of Motion for New Trial §27.16

D. Time for Making Motion for New Trial §27.17

E. Form: Notice of Motion for New Trial §27.18

F. Form: Declaration in Support of Notice of Motion for New Trial §27.19

G. Hearing on Motion §27.20

H. Court's Time to Rule on Motion §27.21

VI. MOTION TO SET ASIDE AND VACATE JUDGMENT §27.22

A. Notice of Motion §27.23

B. Time for Making Motion §27.24

C. Form: Notice of Motion to Vacate Judgment and Enter Different Judgment §27.25

D. Form: Order Granting Motion to Vacate Judgment and Enter Different Judgment (CCP §663) §27.26

VI. APPLICATION FOR RELIEF FROM FORFEITURE §27.27

A. Grounds for Relief From Forfeiture §27.28

B. Rent Must Be Paid and Other Covenants Performed §27.29

C. Procedure for Seeking Relief From Forfeiture §27.30

D. Form: Application for Relief From Forfeiture §27.31

E. Effect of Grant or Denial of Relief §27.32

Back to Top

28

Enforcement of Judgment—Removing Tenant and Tenant’s Belongings

I. REMOVING TENANT §28.1

A. Contents of Writ §28.2

B. Sending Scare Notice to Tenant After Judgment Is Entered §28.3

C. Procedures for Serving and Enforcing Writ of Possession §28.4

D. Sheriff Must Evict if Tenant Does Not Vacate Within 5 Days §28.5

E. Effect of Failure by Sheriff to Act by Return Date of Writ §28.6

F. Judicial Council Form EJ-130: Writ of Possession of Real Property §28.7

II. SHERIFF'S DEPARTMENT PRACTICES AND CHARGES §28.8

III. DISPOSITION OF TENANT'S PERSONAL PROPERTY

A. Personal Property Not Removed by Tenant §28.9

B. Recovery of Personal Property After Eviction §28.10

C. Treating Tenant's Personal Property as Lost or Abandoned §28.11

D. Claim by Tenant for Personal Property (CC §1965) §28.12

E. Advantages and Disadvantages of Requesting Surrender §28.13

F. Form: Claim for Return of Personal Property Under CC §1965 §28.14

IV. DISPOSITION OF LOST PROPERTY §28.15

V. DISPOSITION OF PROPERTY ABANDONED BY TENANT §28.16

A. Landlord Must Store Abandoned Property in Safe Place §28.17

B. Notice Requirements for Disposal of Abandoned Property §28.18

C. Release of Property to Owner on Payment of Costs §28.19

D. Storage Costs §28.20

E. Sale of Unclaimed Property; Liability of Landlord §28.21

VI. EXECUTION ON TENANT'S PERSONAL PROPERTY IN LANDLORD'S POSSESSION §28.22

VII. SETTING ASIDE IMPROPER EXECUTION SALE §28.23

VIII. SUPPLEMENTAL COST BILL §28.24

IX. MOTION TO QUASH OR RECALL WRIT OF EXECUTION §28.25

X. CLAIM OF EXEMPTION §28.26

A. Judicial Council Form EJ-160: Claim of Exemption §28.27

B. Hearing on Objections to Claim of Exemption §28.28

C. Judgment on Claim of Exemption §28.29

XI. WAGE GARNISHMENTS §28.30

Back to Top

29

Appeals

I. APPEAL PROCEDURES §29.1

A. Limited Civil Cases: Timeline for Action After Entry of Judgment §29.2

B. Unlimited Civil Cases: Timeline for Action After Entry of Judgment §29.3

II. APPEALABLE JUDGMENTS AND ORDERS §29.4

III. VACATING PREMISES DOES NOT MOOT TENANT’S APPEAL §29.5

IV. FRIVOLOUS APPEALS §29.6

V. OBTAINING IMMEDIATE TEMPORARY STAY OF ENFORCEMENT OF JUDGMENT §29.7

VI. STAY PENDING APPEAL §29.8

A. Evaluating Need for Stay Pending Appeal §29.9

B. Proper Judge §29.10

C. Grounds on Which Stay May Be Granted §29.11

VII. UNDERTAKING ON APPEAL §29.12

VIII. FORM: WAIVER OF SECURITY §29.13

IX. FORM: NOTICE OF MOTION FOR STAY §29.14

X. REVIEW OF DENIAL OF STAY §29.15

XI. CLEAR ABUSE OF DISCRETION MUST BE SHOWN §29.16

XII. SCOPE OF TRIAL COURT JURISDICTION PENDING APPEAL §29.17

XIII. EVALUATING WHETHER TO APPEAL §29.18

XIV. SUMMARY OF APPELLATE PROCEDURE

A. Applicable Rules §29.19

B. Appeals From Limited Civil Cases §29.20

C. Appeals From Other Superior Court Actions §29.21

D. Standard of Review §29.22

E. Initiating Appeal

1. Notice of Appeal §29.23

2. Form: Notice of Appeal §29.24

3. Form: Notice of Appeal/Cross-Appeal (Limited Civil Case) (Judicial Council Form APP-102) §29.25

4. Form: Notice Designating Record on Appeal (Limited Civil Case) (Judicial Council Form APP-103) §29.26

5. Filing Deadlines Applicable to Appeals From Limited Civil Cases §29.27

6. Filing Deadlines Applicable to Other Superior Court Judgments §29.28

7. Record on Appeal §29.29

a. Electronic Recording or Agreed Statement §29.30

b. Form: Proposed Statement on Appeal (Limited Civil Case) (Judicial Council Form APP-104) §29.31

c. Requesting Reporter's Transcript §29.32

F. Filing Briefs in Appellate Division of Superior Court §29.33

G. Filing Briefs in Court of Appeal §29.34

H. Purpose of Oral Argument §29.35

I. Decision on Appeal and Rehearing §29.36

J. Relief for Tenant After Reversal §29.37

K. Costs and Attorney Fees on Appeal §29.38

L. Abandonment of Appeal §29.39

M. Transfer to District Court of Appeal

1. Transfer of Appeal of Limited Civil Case From Superior Court to Court of Appeal §29.40

2. When Transfer Is Denied by District Court §29.41

Back to Top

30

Civil Writs

I. CIVIL WRITS IN GENERAL §30.1

II. NATURE AND SCOPE OF WRIT §30.2

A. Conditions Under Which Writ of Mandate Will Issue §30.3

B. Alternative and Peremptory Writs of Mandate §30.4

C. Factors in Deciding Whether to Seek Writ §30.5

III. OBTAINING A STAY OF EXECUTION PENDING APPEAL OR DECISION ON PETITION FOR WRIT OF MANDATE §30.6

IV. PERSUADING COURT THAT WRIT SHOULD BE GRANTED §30.7

A. Inadequacy of Other Remedy Must Be Shown §30.8

B. No Direct Appeal §30.9

C. Common Situations in Which Relief by Writ Is Sought §30.10

D. Direct Appeal Possible §30.11

V. PROCEDURE IN OBTAINING WRIT

A. Relief Must First Be Sought in Lower Court §30.12

B. Court in Which Writ Petition Must Be Filed §30.13

C. Applicable Statutes and Rules of Court §30.14

D. Names of Parties §30.15

E. Time Limitation §30.16

F. Procedures in Superior Court §30.17

G. Pleadings in Mandamus Proceeding §30.18

1. Contents of Petition §30.19

2. Common Errors in Petitions for Writ §30.20

3. Opposition to Issuance of Writ §30.21

H. Hearing §30.22

I. Issuance of Peremptory Writ §30.23

J. Mootness §30.24

K. Damages and Costs §30.25

VI. REVIEW OF SUPERIOR COURT ACTION ON WRIT §30.26

VII. APPEAL FROM DISTRICT COURT OF APPEAL DECISION TO SUPREME COURT §30.27

Back to Top

31

Return of Security Deposit and Disposition of Last Month’s Rent

I. TENANT’S RIGHTS IN SECURITY DEPOSIT AND LAST MONTH’S RENT §31.1

II. PAYMENTS TO LANDLORD ON SIGNING OF LEASE THAT ARE NOT CONSIDERED “SECURITY” §31.2

III. SECURITY “DISGUISED” AS ADVANCE RENT §31.3

IV. EFFECT OF DESIGNATION OF DEPOSIT AS “LAST MONTH’S RENT” RATHER THAN “SECURITY DEPOSIT” §31.4

V. LIMITATIONS ON AMOUNT OF SECURITY THAT MAY BE REQUIRED §31.5

VI. TENANT’S CLAIM TO SECURITY HAS PRIORITY OVER THAT OF LANDLORD’S CREDITORS §31.6

VII. SECURITY MAY NOT BE NONREFUNDABLE §31.7

VIII. PROVING AMOUNT OF SECURITY DEPOSIT §31.8

IX. LIMITS ON LANDLORD’S USE OF SECURITY DEPOSIT §31.9

X. LANDLORD’S DUTY TO RETURN DEPOSIT §31.10

A. Tenant’s Right to Request Inspection of Premises and Cure Deficiencies; Use of Deposit §31.10A

B. Tenant’s Right to Refund of Security Deposit Balance and Accounting §31.10B

XI. LANDLORD’S SALE OR OTHER TRANSFER OF PREMISES §31.11

XII. INTEREST ON SECURITY DEPOSIT §31.12

XIII. DAMAGES FOR LANDLORD’S IMPROPER RETENTION OF DEPOSIT §31.13

XIV. EFFECT ON UNLAWFUL DETAINER §31.14

Back to Top

1

Overview of Unlawful Detainer Law

I. SCOPE OF THIS BOOK §1.1

II. LANDLORD’S ALTERNATIVES TO UNLAWFUL DETAINER ACTION §1.2

III. ETHICS §1.3

IV. SUMMARY OF UNLAWFUL DETAINER PROCESS §1.4

A. Description of Unlawful Detainer Action §1.5

B. Reduced Time Frame Governing Unlawful Detainer Procedure §1.6

C. Landlord Must Strictly Comply With Statutory Requirements §1.7

D. Notice Requirements §1.8

E. Bases for Terminating Tenancy; Applicable Notice §1.9

1. Termination Requiring 3-Day Notice (Longer Notice Permitted) §1.10

2. Termination Requiring 30-Day or 60-Day Notice §1.11

3. Termination Requiring Other Notice §1.12

4. Termination Requiring No Notice §1.13

F. Jurisdiction and Venue §1.14

G. Default Judgment §1.15

H. Bases for Defending Unlawful Detainer Actions §1.16

I. Trial

1. Tenant Entitled to Jury Trial if Answer Presents Admissible Defenses §1.17

2. Rent and Damages Awardable to Landlord §1.18

J. Posttrial Motions §1.19

K. Execution by Sheriff §1.20

V. SUMMARY OF POTENTIAL TENANT RESPONSES TO LANDLORD'S ACTIONS §1.20A

VI. INVALIDITY OF LEASE PROVISION WAIVING TENANT'S RIGHTS §1.21

VII. WRIT OF IMMEDIATE POSSESSION §1.22

VIII. UNAVAILABILITY OF UNLAWFUL DETAINER IF TENANT IS NO LONGER IN POSSESSION OF PREMISES §1.23

Back to Top

Relationship of Unlawful Detainer to Other Actions

I. ISSUES NOT COGNIZABLE IN UNLAWFUL DETAINER ACTIONS §2.1

II. COORDINATION AND CONSOLIDATION OF UNLAWFUL DETAINER WITH OTHER ACTIONS §2.2

A. Coordination of Complex Actions §2.2A

B. Transfer of Noncomplex Actions §2.2B

C. Consolidation of Actions Pending in Same County §2.2C

III. CONVERSION OF UNLAWFUL DETAINER ACTION TO ACTION FOR EJECTMENT §2.3

IV. SEVERING POSSESSION ISSUE FROM RENT-DUE ISSUE §2.4

V. TENANT'S SUIT FOR DECLARATORY OR INJUNCTIVE RELIEF; STAY OF UNLAWFUL DETAINER ACTION

A. Overview: Can Unlawful Detainer Actions Be Enjoined? §2.5

B. Obtaining Injunctive Relief

1. Legal Basis; Grounds §2.5A

2. The Newby Exception: Adequate Remedy at Law §2.5B

3. Overcoming Newby Limitations §2.5C

4. Procedure; Bond Required §2.5D

VI. LANDLORD'S SUIT FOR INJUNCTIVE RELIEF §2.6

VII. ACTIONS AFTER ENTRY OF JUDGMENT §2.7

VIII. ARBITRATION PROVISION IN LEASE §2.8

IX. ADMINISTRATIVE MANDAMUS §2.9

X. BANKRUPTCY §2.10

Back to Top

Self-Help by Landlord

I. USE OF SELF-HELP BY LANDLORD §3.1

II. FORCIBLE ENTRY AND DETAINER §3.2

A. Examples of Forcible Entry and Detainer §3.3

B. Retaking Abandoned Premises Is Not Forcible Entry or Detainer §3.4

C. Recovering Punitive Damages for Forcible Entry or Detainer Requires Showing of Malice §3.5

III. SHUTTING OFF UTILITIES OR OTHERWISE BARRING TENANT’S USE OF PROPERTY

A. Civil Code §789.3 §3.6

B. Remedies Under Public Utilities Code and CC §1942.2 §3.6A

IV. OTHER ACTIONS BY LANDLORD THAT MAKE PREMISES UNINHABITABLE §3.7

V. SELF-HELP EVICTIONS OF TENANTS IN RESIDENTIAL HOTELS §3.8

VI. SELF-HELP EVICTIONS OF LODGERS §3.9

VII. SELF-HELP EVICTIONS OF OCCUPANTS OF TRANSITIONAL HOUSING §3.10

VIII. SELF-HELP EVICTIONS OF HOTEL GUESTS §3.11

IX. ANTI-HARASSMENT STATUTE (CC §1940.2) §3.12

Back to Top

Representing the Tenant; Office Procedures

I. OFFICE PROCEDURES §4.1

II. LAW OFFICE AUTOMATION §4.2

III. LEGAL REFERENCE MATERIALS §4.3

A. Necessary Legal Sources and Forms §4.4

B. Useful Additional Library Materials §4.5

IV. INITIAL STEPS BEFORE DECIDING WHETHER TO REPRESENT TENANT

A. Initial (Telephone) Contact With Prospective Client §4.6

B. Form: Telephone Intake Form §4.7

C. Scheduling Meeting With Prospective Client §4.8

D. Conflict of Interest in Representing Tenant

1. Performing a Conflicts Check §4.9

2. Common Conflict Situations in Unlawful Detainer Actions §4.10

E. Initial Meeting With Prospective Client §4.11

F. Use of Client Interview Questionnaire §4.12

G. Form: Client Interview Questionnaire §4.13

H. Conduct of Initial Meeting §4.14

I. Investigate Tenant's Relationship With Former Counsel and Any Litigation History §4.15

J. Contact Landlord's Attorney for Preliminary Look at Opposing View of Case §4.16

K. Initial Assessment of Case §4.17

L. Scope of Initial Assessment §4.18

M. Allaying Tenant's Fears §4.19

V. REPRESENTATION OF TENANT

A. Decision to Represent Tenant §4.20

1. If Attorney Will Not Represent or Assist Tenant §4.21

2. When More Time Needed for Decision on Representation §4.22

3. Form: Substitution of Attorney—Civil (Without Court Order) (Judicial Council Form MC-050; Mandatory) §4.23

4. If Attorney and Tenant Agree That Attorney Will Represent or Assist Tenant §4.24

5. Disclosure Regarding Professional Liability Insurance §4.24A

B. Representation Agreements and Ground Rules §4.25

1. Delegating Tasks to Client §4.26

2. Contents of Representation Agreement §4.27

3. Form: Representation Agreement—Private Practitioner §4.28

4. Form: Client Retainer Agreement—Legal Services Organization §4.29

C. Limited Scope Representation (Unbundling)

1. Applicable Law §4.29A

2. Checklist: Tenant Fee Agreement §4.29B

D. Deposit of Rent Due Into Client Trust Account §4.30

E. Form: Requirement for Deposit of Rent Into Attorney-Client Trust Account §4.31

VI. PROCEDURE AFTER REPRESENTATION IS UNDERTAKEN

A. Ascertain Goal of Representation §4.32

1. Ascertain Whether Tenant Wants to Continue Living in Rental Unit §4.33

2. Goal of Representation Is Not Necessarily Successful Defense of Unlawful Detainer Action §4.34

B. Counsel Should Investigate Facts of Case §4.35

C. Determining Defense Strategy §4.36

D. Making Choices on Strategy and Tactics §4.37

E. Example of Strategic and Tactical Choices in Procedure When Defective 3-Day Notice Was Served §4.38

1. Strategy and Tactics: Filing Motion to Quash Service of Summons or Demurrer §4.39

2. Strategy and Tactics: Filing an Answer §4.40

3. Strategy and Tactics: Filing Motion for Summary Judgment §4.41

F. Counsel Should Simultaneously File Pleadings, Conduct

Discovery, and Negotiate §4.42

Back to Top

5

Grounds for Eviction

I. GROUNDS FOR EVICTION GENERALLY §5.1

II. GROUNDS FOR EVICTION BASED ON TENANT’S DEFAULT; 3-DAY NOTICE REQUIRED §5.2

III. REASONS FOR TERMINATION NOT BASED ON TENANT’S DEFAULT; NOTICE REQUIRED §5.3

IV. REASONS FOR TERMINATION NOT BASED ON TENANT’S DEFAULT; NOTICE NOT REQUIRED §5.4

V. TERMINATING MOBILEHOME PARK TENANCIES §5.5

VI. EVICTION BROUGHT BY CITY PROSECUTOR OR CITY ATTORNEY §5.6

Back to Top

6

Three-Day Notice

I. PURPOSE AND EFFECT OF 3-DAY NOTICE §6.1

A. Purpose of 3-Day Notice §6.2

B. If 3-Day Notice Is Defective §6.3

II. IMMEDIATE TENANT RESPONSE TO SERVICE OF 3-DAY NOTICE (BEFORE COMPLAINT HAS BEEN FILED) §6.4

III. STRICT COMPLIANCE WITH STATUTE IS REQUIRED §6.5

IV. NOTICE REQUIRED EVEN IF LEASE PROVIDES THAT IT IS NOT NECESSARY §6.6

V. COMPUTATION OF NOTICE PERIOD §6.7

VI. NOTICE IS VALID EVEN THOUGH IT CONTAINS MORE THAN ONE REASON FOR EVICTION §6.8

VII. NOTICE MAY BE WITHDRAWN §6.9

VIII. FORM OF NOTICE §6.10

A. Notice Must Be in Writing §6.11

B. Description of Premises in Notice §6.12

C. Signature on Notice §6.13

D. Demand for Possession Must Be Unequivocal §6.14

E. Statement of Three Days in Notice Itself May Not Be Required §6.15

F. Notice May Declare Election of Forfeiture §6.16

G. Demand for Rent and Charges

1. Notice to Quit Must Include Demand for Rent as Alternative §6.17

2. Notice Must Specify No More Than Rent Actually Due §6.18

a. Precise Amount of Rent Need Not Be Specified if Calculation of Rent Depends on Tenant's Accounting §6.19

b. Statement of Rent Due, and Additional Claims in Notice §6.20

c. Effect of Federal Fair Debt Collection Practices Act §6.20A

3. Notice Seeks Less Than Actual Amount Owed §6.21

4. One-Year Limitation on Amount of Rent That Can Be Demanded §6.22

5. Inclusion of Late Charges in Notice §6.23

6. Validity of Late Charges Landlord Claims Are Due

a. As Liquidated Damages §6.24

b. As Violation of Usury Law §6.24A

IX. SERVICE OF NOTICE

A. When Notice May Be Served §6.25

1. “Holidays” Defined §6.26

2. When Tenant May Perform Under Notice §6.27

B. Method of Service §6.28

C. Statutory Requirements for Service of 3-Day Notice §6.29

X. WHEN 3-DAY NOTICE IS BASED ON FAILURE TO PAY RENT §6.30

XI. TENDER OF RENT

A. Method of Tender of Rent §6.31

B. Proof That Tender Was Made §6.32

C. Depositing Money in Landlord’s Bank Account §6.33

D. Effect of Tender of Rent on Obligation to Pay Rent §6.34

E. Time of Tender of Rent

1. Tender of Rent Before Service of Notice §6.35

2. Tender of Rent After Notice Is Served and Before Notice Period Expires §6.36

3. Tender of Rent After Notice Period Has Expired §6.37

XII. WHEN 3-DAY NOTICE IS BASED ON DEFAULT UNDER LEASE OTHER THAN FAILURE TO PAY RENT

A. Violation of Covenant in Lease Generally; Statutory Basis for 3-Day Notice §6.38

1. Express and Implied Covenants §6.39

2. Trivial or Technical Breach Not Sufficient §6.40

3. Waiver and Estoppel §6.41

4. Repeated Acceptance of Late Rent §6.42

5. Effect of Tenant's Performance §6.43

6. Whether Notice Must Be Given in Alternative §6.44

7. Stating the Breach §6.45

B. Violation of Covenant Against Subletting, Assignment, or Waste; Maintaining Nuisance; or Using Premises for Unlawful Purpose §6.46

1. Subletting, Assignment, and Waste §6.47

2. Nuisance §6.48

3. Unlawful Purpose §6.49

XIII. SALE UNDER EXECUTION, MORTGAGE, OR TRUST DEED §6.50

XIV. COMMON FLAWS IN 3-DAY NOTICE OR ITS SERVICE THAT RENDER NOTICE INEFFECTIVE §6.51

XV. EFFECT OF SERVICE OF MORE THAN ONE NOTICE §6.52

Back to Top

7

Thirty-Day/Sixty-Day Notices and Termination Without Notice

I. TERMINATING PERIODIC TENANCIES

A. Using 30-Day Notice §7.1

B. Using 60-Day Notice §7.1A

II. IMMEDIATE TENANT RESPONSE TO SERVICE OF NOTICE §7.2

III. TENANT REMAINS IN POSSESSION AFTER TERMINATION

A. “Holdover” Tenant Defined §7.3

B. Tenant Serves Landlord With Notice of Termination and Remains in Possession After Termination Period §7.4

C. Term Has Expired but Tenant Holds Over §7.5

D. Termination of Employment of Resident Employee §7.6

E. Death of Tenant §7.7

F. Expiration of Fixed-Term Lease §7.8

G. Effect of Landlord’s Acceptance of Rent After Expiration of Fixed Term §7.9

H. Effect of Clause Providing for Automatic Extension or Renewal §7.9A

I. Lodger Who Holds Over in Owner-Occupied Dwelling §7.10

J. Expiration of Periodic (Generally Month-to-Month) Lease §7.11

IV. LENGTH OF PERIOD OF NOTICE

A. Shortened Notice Periods by Agreement §7.12

B. Date on Which Mailed Notice Is Effective §7.13

C. Notice Period Must Expire Before Complaint Can Be Filed §7.14

V. WITHDRAWAL OF NOTICE; ACCEPTANCE OF RENT PAYMENTS §7.15

VI. FORM OF NOTICE

A. Notice Must Be in Writing §7.16

B. Description of Premises and Signature §7.17

C. Notice Cannot Be in the Alternative §7.18

D. Statement of 30 or 60 Days §7.19

E. Cover Sheet; Evictions After Foreclosure §7.19A

VII. APPORTIONMENT OF RENT §7.20

VIII. METHOD OF SERVICE §7.21

IX. TENANCY AT WILL §7.22

X. EFFECT OF SERVICE OF 30-DAY OR 60-DAY NOTICE IN CONJUNCTION WITH SERVICE OF 3-DAY NOTICE §7.23

XI. COMMON FLAWS IN NOTICE OR ITS SERVICE, RENDERING NOTICE INEFFECTIVE §7.24

Back to Top

Service of Notices on Tenant

I. EVALUATING SERVICE OF NOTICE §8.1

II. METHODS OF SERVICE OF NOTICE §8.2

A. Personal Service §8.3

B. Substituted Service (CCP §1162(a)(2)) §8.4

C. Service by Posting, Delivery, and Mail (CCP §1162(a)(3)) §8.5

1. Service by Posting Alone Is Insufficient §8.6

2. Service by Mail Alone Is Insufficient §8.7

D. Extension of Tenant's Time to Act When Notice Is Mailed §8.8

1. Notice Effective on Receipt §8.8A

2. Notice Effective on Mailing §8.8B

3. Effective Date of Notice Extended by CCP §1013 §8.8C

4. Rationale Favoring Extension of Response Period Under CCP §1013 When Notice Is Mailed §8.9

III. IMPROPER SERVICE

A. Effect of Defective Service of Notice §8.10

B. Actual Receipt of Improperly Served Notice §8.11

IV. EFFECT OF SERVICE ON PERSONS OTHER THAN TENANT §8.12

A. Occupants Who Are Neither Tenants nor Subtenants §8.13

B. Cotenants §8.14

C. Subtenants §8.15

V. EXAMPLES OF COMMON MISTAKES IN SERVICE §8.16

VI. PROOF OF SERVICE OF NOTICE §8.17

Back to Top

9

Negotiating Strategies

I. IMPORTANCE OF NEGOTIATION AND EARLY SETTLEMENT §9.1

A. Definitions of Terms: “Negotiation,” “Target Point,” “Resistance Level,” and “Bottom Line” §9.2

B. Determining Tenant’s Goals and Expectations §9.3

C. Determining the Bargaining Range §9.4

D. Possible Bargaining Outcomes §9.5

E. Evaluating Case §9.6

II. KEY FACTORS TOWARD SETTLEMENT IN TENANT’S FAVOR

A. Merits of Tenant’s Case §9.7

B. Whether Tenant Is Willing to Relinquish Possession §9.8

C. Whether Tenant Is Impervious to Judgment for Damages §9.9

D. Whether Rental Agreement Contains Attorney Fee Clause §9.10

III. DEVELOPING A BARGAINING STRATEGY §9.11

A. Look for Means to Strengthen Tenant’s Case and Weaken Landlord’s §9.12

B. Tenant’s Attorney Must Be Ready to Move Quickly to Take Advantage of Settlement Opportunities §9.13

C. Tenant’s Attorney Should Be Aware of Landlord’s Goals and Fears §9.14

D. Determining How Much to Demand in Initial Settlement Offer §9.15

IV. ADVANTAGES AND DISADVANTAGES OF FACING OPPOSING COUNSEL KNOWN TO TENANT’S COUNSEL §9.16

V. USING BARGAINING TACTICS §9.17

VI. COMMUNICATING WARNINGS TO OPPOSING PARTY §9.18

VII. WHEN LANDLORD’S COUNSEL APPEARS TO BE DRAWING OUT ACTION TO GENERATE FEES §9.19

VIII. DRAFTING SETTLEMENT AGREEMENT §9.20

IX. EVALUATING SUCCESS OF SETTLEMENT AGREEMENT §9.21

Back to Top

Proceeding in Forma Pauperis

I. AUTHORITY FOR OBTAINING WAIVER OF COURT FEES AND COSTS §10.1

II. RIGHT TO PROCEED IN FORMA PAUPERIS §10.2

III. SUBSTANTIVE SHOWING OF INDIGENCE §10.3

IV. CLASSES OF CLAIMANTS AND CATEGORIES FOR WHICH FEES AND COSTS MAY BE WAIVED §10.4

V. FEES AND COSTS IN TRIAL COURT

A. Types of Fees and Costs Waived by Initial Application §10.5

B. Waiver of Other Fees and Costs §10.6

C. Applying to Proceed in Forma Pauperis

1. Procedure for Request for Waiver of Court Fees and Costs §10.7

2. Grant of Waiver of Court Fees and Costs Without Hearing §10.7A

3. Hearing on Applicant’s Entitlement to Waiver of Court Fees and Costs §10.7B

4. Court Issues and Serves Order on Request to Waive Court Fees §10.7C

5. Effect of Denial of Waiver on Pleadings Already Filed by Applicant §10.7D

6. Procedure for Subsequent Determinations of Fee Waiver Eligibility §10.8

D. Right to Waiver or Reimbursement of Discovery Costs §10.9

E. Right to Appointment of Attorney §10.10

VI. FEES AND COSTS ON APPEAL

A. Proceeding in Forma Pauperis §10.11

1. Filing Fees §10.11A

2. Fees for Transcript §10.11B

3. Fees for Interpreter §10.11C

4. Appeal Bond Fees §10.11D

B. Review of Denial of Request §10.12

Back to Top

Service of Summons and Complaint; Motion to Quash Service of Summons

I. SERVICE OF SUMMONS AND COMPLAINT §11.1

II. IMMEDIATE ACTIONS THAT CAN BE TAKEN ON TENANT'S BEHALF AFTER SERVICE OF SUMMONS §11.2

III. ATTEMPTS TO AVOID SERVICE OF SUMMONS §11.3

IV. FORM OF SUMMONS §11.4

V. FORM: SUMMONS—UNLAWFUL DETAINER—EVICTION (JUDICIAL COUNCIL FORM SUM-130) §11.5

VI. SERVICE OF PROCESS §11.6

A. Methods of Service §11.7

B. Strict Construction of Service Statutes §11.8

C. Effect of Defective Service §11.9

D. New Summons Need Not Be Served With Service of Amended Complaint §11.10

E. Return of Service §11.11

F. Personal Service §11.12

G. Substituted Service §11.13

1. Substituted Service on Individual Defendant §11.14

2. Substituted Service on Business Entity §11.15

3. Showing Reasonable Diligence §11.16

4. Recital on Return of Service §11.17

H. Service by Mail With Acknowledgment of Receipt §11.18

I. Service by Posting and Mailing §11.19

J. Order Allowing Service by Posting §11.20

K. Completion Date of Service by Posting §11.21

L. Service by Publication §11.22

VII. SPECIAL APPEARANCE REQUIRED ON MOTION TO QUASH

A. What Constitutes a General Appearance §11.23

B. Making a Special Appearance §11.24

VIII. GROUNDS FOR MOTION TO QUASH §11.25

A. Error in Filled-Out Summons §11.26

B. Failure to Properly Serve All Required Papers §11.27

C. Motion to Quash When Cause of Action Is Not Properly Unlawful Detainer §11.28

D. Complaint Contains Another Cause of Action in Addition to Unlawful Detainer §11.29

E. Complaint Prays for Damages Not Allowed in Unlawful Detainer §11.30

F. Defendant Erroneously Designated

1. Pleading Requirements; “Doe” Defendants §11.31

2. Entering Judgment Against “Doe” Defendant §11.32

IX. CONSTITUTIONAL CHALLENGE TO FIVE-DAYS-TO-ANSWER REQUIREMENT §11.33

X. MOTION TO QUASH—PROCEDURE

A. Time to File Motion; Effect of Motion on Time to File Answer §11.34

B. Form of Notice §11.35

C. Hearing on Motion to Quash; Burden of Proof §11.36

D. Filing Fees §11.37

XI. FORM: MOTION TO QUASH SERVICE OF SUMMONS; POINTS AND AUTHORITIES; DECLARATION OF TENANT §11.38

XII. FORM: ORDER GRANTING MOTION TO QUASH SERVICE OF SUMMONS §11.39

XIII. EFFECT OF GRANTING MOTION TO QUASH §11.40

XIV. EFFECT OF DENIAL OF MOTION TO QUASH §11.41

XV. APPLICATION FOR WRIT OF MANDATE IF MOTION DENIED §11.42

XVI. POSSIBLE EFFECT OF CCP §1167.4 ON WHETHER TIME FOR FILING RESPONSIVE PLEADINGS IS TOLLED BY PETITION FOR WRIT §11.43

XVII. CHART: TIMELINE FOR TENANT ACTIONS IF SUMMONS OR SERVICE OF SUMMONS WAS DEFECTIVE §11.44

Back to Top

12

Default Judgments

I. PROCEDURE FOR OBTAINING JUDGMENT BY DEFAULT §12.1

II. CHECKLIST: OBTAINING RELIEF FROM ENTRY OF DEFAULT §12.2

III. SERVICE OF APPLICATION FOR ENTRY OF DEFAULT; LANDLORD'S OBLIGATION TO INFORM TENANT §12.3

IV. EFFECT OF ENTRY OF DEFAULT; LATE FILING OF RESPONSE §12.4

V. ENTRY OF DEFAULT; WRIT OF IMMEDIATE POSSESSION §12.5

VI. PROVE-UP HEARING FOR RELIEF OTHER THAN RESTITUTION §12.6

VII. PROCEDURE FOR ENTERING DEFAULT IF SERVICE WAS BY PUBLICATION §12.7

VIII. SETTING ASIDE DEFAULT AND DEFAULT JUDGMENT §12.8

A. Stipulation to Set Aside Default and Default Judgment §12.9

B. Form: Stipulation to Set Aside Default and Default Judgment; Order §12.10

C. Procedures for Applying to Set Aside Default §12.11

D. Grounds for Setting Aside Default and Default Judgment §12.12

1. Mistake, Inadvertence, Surprise, or Excusable Neglect (CCP §473)

a. Relief May Be Granted for Client or Attorney Error §12.13

b. Relief Must Be Granted for Attorney Error §12.14

c. Time Limitations on Bringing Motion Under CCP §473 §12.15

d. Showing in Support of Motion; Declaration §12.16

e. Excuses for Default; Examples §12.17

(1) Mistake of Fact §12.18

(2) Attorney's Mistake of Law §12.19

(3) Excusable Neglect §12.20

(4) Fraud §12.21

2. Clerical Mistakes; Vacating Void Judgments (CCP §473, ¶4) §12.22

a. Judgment Void on Its Face §12.23

b. Judgment Void in Fact, But Not Void on Its Face §12.24

3. When Service of Summons Does Not Result in Actual Notice to Party (CCP §473.5) §12.25

4. Motion or Separate Action in Equity Available to Vacate Judgment on Ground of Fraud or Mistake §12.26

5. Erroneously Entered Default or Default Judgment §12.27

6. Examples of Erroneously Entered Defaults and Default Judgments §12.28

IX. WHEN WRIT OF EXECUTION HAS BEEN ISSUED §12.29

X. FORMS: MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT

A. Form: Notice of Motion to Set Aside Default and Default Judgment; Supporting Memorandum §12.30

B. Form: Declaration Supporting Motion to Set Aside Default and Default Judgment §12.30A

XI. ORDER SETTING ASIDE DEFAULT AND DEFAULT JUDGMENT §12.31

XII. FORM: ORDER SETTING ASIDE DEFAULT AND DEFAULT JUDGMENT §12.32

XIII. EFFECT OF ORDER SETTING ASIDE DEFAULT AND DEFAULT JUDGMENT §12.33

Back to Top

13

Demurring and Moving to Strike

I. ATTACKING LEGAL SUFFICIENCY OF COMPLAINT §13.1

II. THE DEMURRER §13.2

A. Grounds for General Demurrer §13.3

B. Grounds for Special Demurrer §13.4

C. Sustaining Demurrer With or Without Leave to Amend §13.5

D. Demurrer Permitted on Grounds of No Jurisdiction Over Subject

Matter §13.6

E. Effect of Another Pending Unlawful Detainer Action §13.7

F. Parties

1. Improper Defendant §13.8

2. Improper Plaintiff §13.9

G. Venue and Trial Court Location §13.10

H. Description of Premises With Reasonable Certainty §13.11

I. Existence of Landlord-Tenant Relationship §13.12

J. Notice of Termination

1. Alleging Service of Notice §13.13

2. Alleging Proper Notice §13.13A

3. Alleging Contents of Notice §13.14

a. Default in Rent §13.15

b. Breach of Covenant Other Than Nonpayment of Rent §13.16

c. Subletting, Waste, Nuisance, or Use for Unlawful Purpose §13.17

d. Expiration of Term

(1) Fixed Term §13.18

(2) Periodic Tenancy §13.19

K. Tenant Continues in Possession §13.20

L. Fraud, Force, or Violence §13.21

M. Compliance With Implied Warranty of Habitability §13.22

N. Statute of Limitations §13.23

O. Checklist: Demurrable Defects in Complaint §13.23A

P. Form: Demurrer to Complaint §13.24

III. MOTION TO STRIKE §13.25

A. Irrelevant, False, or Improper Allegations §13.26

B. Defects Not Subject to Demurrer §13.27

C. Improper Request for Damages §13.28

D. Necessary Allegations for Finding Statutory Damages §13.29

E. Rental Value of Premises After Suit Brought §13.30

F. Attorney Fee Provision in Lease §13.31

G. Verification §13.32

H. Failure to State “§1161a” in Caption §13.32A

I. Sample Form: Motion to Strike §13.33

IV. PROCEDURE FOR DEMURRER AND MOTION TO STRIKE

A. Answer May Be Filed With Demurrer §13.34

B. Timing of Hearing on Demurrer and Motion to Strike §13.35

C. Supporting Memorandum §13.36

D. Effect of Overruling of Demurrer §13.37

E. Frivolous Demurrers §13.38

F. Motion to Strike §13.39

V. FILING FEES §13.40

VI. EXTENSION OF TIME TO PLEAD §13.41

VII. MOTION FOR JUDGMENT ON PLEADINGS §13.42

VIII. SPECIAL (ANTI-SLAPP) MOTION TO STRIKE §13.43

Back to Top

14

Answering and Alleging Affirmative Defenses

I. RIGHT TO ANSWER §14.1

II. USE OF JUDICIAL COUNCIL FORMS §14.2

III. TIME TO ANSWER §14.3

IV. GOOD CAUSE TO EXTEND TIME TO ANSWER

A. Length of Extension §14.4

B. Steps Tenant Should Take to Get Extension of Time to File Answer §14.5

V. DENIALS §14.6

VI. BASES FOR DENIALS §14.7

VII. AFFIRMATIVE DEFENSES §14.8

A. Priority of Title After Foreclosure Sale §14.9

B. Implied Warranty of Habitability and Retaliatory Eviction §14.10

C. “Equitable” Defenses §14.11

D. Laches §14.12

E. Other Affirmative Defenses §14.13

F. Illegal Discrimination §14.13A

1. Violation of Unruh Civil Rights Act as Defense §14.14

a. Application of Unruh Act to Landlords §14.15

b. Prohibition of Arbitrary Discrimination Under Unruh Act §14.16

c. Minimum Income Policy §14.17

d. Examples of Reach of Unruh Act §14.18

2. Discrimination Based on Age

a. Discrimination Against Families With Children §14.19

b. Senior Citizen Housing §14.20

3. Discrimination Under Federal Fair Housing Acts §14.21

4. Discrimination Under California Fair Employment and Housing Act §14.22

5. Family Day Care Home §14.22A

6. Immigration Status §14.22B

7. Domestic Violence §14.22C

G. Other Violations of Housing Statutes and Ordinances

1. Certificate of Occupancy Violations §14.23

2. Landlord's Duty to Repair; "Repair and Deduct" Statutes (CC §§1941–1942.5) §14.24

3. Violation of Tenantability Statutes (CC §1942.4) §14.24A

a. Indications That Premises Are Untenantable §14.25

b. Conditions Rebuttably Presumed to Breach Habitability Requirements §14.26

c. If Tenant Causes Condition of Premises §14.27

d. Tenant's Remedies §14.28

e. Waiver of Tenant's Rights §14.29

4. Statutory Violations Under Rent Control §14.30

H. Fraud §14.31

I. Adhesion Contract §14.32

J. Waiver and Estoppel §14.33

K. Express Promise to Repair §14.34

1. Dependent or Independent Covenants §14.35

2. Oral Promise Made Before Written Lease §14.36

a. Consideration §14.37

b. Statute of Frauds §14.38

c. Parol Evidence Rule as Applied to Leases §14.39

d. Dependency of Covenants §14.40

3. Tenant's Arguments for Admission of Oral Promise Made Before or at Time of Execution of Written Agreement §14.41

4. Oral Promise Made Before Entry Into Oral Lease §14.42

5. Promise Made Subsequent to Lease §14.43

6. When Tenant Makes Promise to Repair §14.43A

L. Implied Covenant of Good Faith §14.44

M. Actual Partial Eviction §14.45

N. Notice Served More Than One Year After Rent Due §14.46

O. Breach of Covenant of Quiet Enjoyment §14.47

P. Offsets §14.48

Q. When Tenant Has Vacated Premises §14.49

VII. VERIFICATION §14.50

VIII. FILING ANSWER AFTER RULING ON DEMURRER §14.51

IX. EXTENSION OF TIME TO PLEAD §14.52

X. AMENDING ANSWER §14.53

XI. CROSS-COMPLAINTS §14.54

A. When Tenant Has Vacated Premises §14.55

B. When Landlord Fails to Challenge Cross-Complaint §14.56

C. Procedure §14.57

D. Form: Answer—Unlawful Detainer (Judicial Council Form UD-105) [Deleted] §14.58

Back to Top

15

Affirmative Defenses—Implied Warranty of Habitability

I. INTRODUCTION

A. Adoption of Implied Warranty of Habitability: Hinson v Delis; Green v Superior Court §15.1

B. Definition of Implied Warranty of Habitability §15.2

C. Supreme Court Rationale in Adopting Implied Warranty Doctrine §15.3

D. Landlord May Be Held in Breach Even if Another Is Responsible for Defect §15.4

E. Time Within Which Landlord Must Correct Defects §15.5

II. USES OF IMPLIED WARRANTY OF HABITABILITY DOCTRINE §15.6

A. When Warranty Used in Suit for Affirmative Damages and Other Relief §15.7

B. Procedure When Using Warranty as Defense in Unlawful Detainer Action §15.8

C. Effect of Tenant Prevailing at Trial on Warranty Defense §15.9

III. ESTABLISHING BREACH OF WARRANTY

A. Facilities Covered §15.10

1. Government-Owned Housing §15.11

2. Portions of Premises Covered by Warranty of Habitability §15.12

B. Housing and Building Code Violations

1. Sources of Housing and Building Code Standards §15.13

2. Examples of Housing and Building Code Violations §15.13A

3. Jury Instructions Relating to Code Violations §15.14

4. Defects Actionable Under Implied Warranty or Negligence But Not Covered by Housing and Building Codes §15.15

C. Failure to Protect Tenants From Criminal Acts §15.16

1. Determining Whether Landlord Has a Duty to Protect Against Criminal Acts §15.17

2. Examples of Duty Not Found or Duty Held Not Breached §15.18

3. Examples of Duty Found or Landlord Held in Breach §15.19

4. Breach of Duty Raised by Allegation of Breach of Implied Warranty §15.20

5. Level of Security at Time Tenant Moves Into Premises §15.21

6. Proving Causation §15.21A

D. Seriousness of Defects

1. Requirement That Defects Be Serious §15.22

2. Examples of Defects Held Serious Enough to Constitute Breach of Implied Warranty §15.23

3. Evidence of Breach §15.24

a. Proving That Existing Conditions Violate Code §15.25

b. Presumption of Breach of Habitability Standards §15.26

c. Viewing the Premises §15.27

E. Special Problems

1. Premises Uninhabitable at Inception of Tenancy §15.28

2. Premises Become Uninhabitable After Tenant Is Served With Notice of Termination §15.29

3. Waiver of Warranty §15.30

4. Defect Caused by Tenant's Wrongful Action §15.31

5. Defects Caused by Acts of Nature §15.32

IV. NOTICE OF DEFECT §15.33

V. REASONABLE TIME TO REPAIR NOT REQUIRED §15.34

VI. PROTECTIVE ORDERS §15.35

A. When Protective Orders Are Appropriate §15.36

B. Advantages to Tenant of Voluntary Deposit Into Attorney's Trust

Account §15.37

VII. DAMAGES FOR BREACH OF IMPLIED WARRANTY §15.38

A. Relief Based on Affirmative Defense of Breach of Implied Warranty §15.39

1. Period During Which Damages Accrue §15.40

2. Tenant Must Pay “Reasonable Rent” Even if Warranty Breached §15.41

3. Various Approaches to Measuring Damages §15.42

a. “Difference-in-Value” Approach §15.43

b. “Discomfort-and-Annoyance” Approach §15.44

c. “Percentage-Reduction-of-Use” Approach §15.45

4. Limits on Amount by Which Rent May Be Reduced §15.46

5. Amount of Rent Reduction in Subsidized Housing §15.46A

6. Nominal Damage Awards §15.47

B. Actions Brought Under CC §1942.4 §15.48

C. Actions Based on Tort of Breach of Implied Warranty §15.49

D. Hybrid View of Warranty of Habitability—Contract and Tort §15.50

VIII. EFFECT OF RECENT PURCHASE OF PROPERTY BY LANDLORD §15.51

IX. LACK OF CERTIFICATE OF OCCUPANCY §15.52

Back to Top

Affirmative Defenses—Retaliatory Evictions

I. LEGAL FRAMEWORK §16.1

II. SEVERAL SOURCES OF LAW MAY APPLY SIMULTANEOUSLY §16.2

A. Civil Code §1942.5

1. Tenants' Actions on Habitability (CC §1942.5(a))

a. Protected Parties and Acts §16.3

b. Limitations on Protection

(1) Tenant Cannot Be in Default in Payment of Rent §16.4

(2) Tenant May Not Invoke CC §1942.5(a) More Than Once a Year §16.5

(3) Protective Period Under CC §1942.5 Limited to 180 Days §16.6

(4) Defense Unavailable in Ellis Act Evictions §16.6A

2. Tenant Union Activity (CC §1942.5(c)) §16.7

3. Exercise of “Rights Under Law” (CC §1942.5(c)) §16.8

a. Additional Examples of Acts Protected by CC §1942.5(c) §16.9

b. Examples of Acts Protected Before Enactment of CC §1942.5 §16.10

4. Tenant Cannot Waive Rights (CC §1942.5(d)) §16.11

5. Notice and Burden of Proof (CC §1942.5(e)) §16.12

6. Procedure for Proving Retaliation When Landlord Includes Grounds in Notice (CC §1942.5(e)) §16.13

7. Remedies (CC §1942.5(f)–(g)); Punitive Damages and Attorney Fees §16.14

8. Remedies Not Exclusive (CC §1942.5(h)) §16.15

B. Public Policy; Retaliation for Refusal to Commit Crime Improper §16.16

C. Victims of Domestic Violence §16.16A

D. Other Statutory Rights

1. Retaliation Based on Tenant's Assertion of Statutory Rights; Implied Protection §16.17

2. Retaliation Based on Tenant's Assertion of Statutory Rights; Express Statutory Protection §16.18

3. Common Law §16.19

4. Local Rent Control Ordinances §16.20

5. Constitution §16.21

III. LIMITATIONS ON RETALIATORY EVICTION DEFENSE §16.21A

IV. PROOF OF RETALIATORY MOTIVE

A. Sole or Dominant Motive §16.22

B. Treatment of Mixed Motives in Labor Law §16.23

C. Presumptions and Burden of Proof §16.24

D. Evidence §16.25

E. Analogies Drawn From Labor Law to Prove Retaliatory Motive §16.26

F. Form: Affirmative Defense on Ground of Retaliatory Eviction §16.27

Back to Top

Myron Moskovitz

Sonya Bekoff Molho

Steven A. MacDonald

Denise McGranahan

Sallyann Molloy

I. SCOPE OF LOCAL RENT CONTROL ORDINANCES

A. Local Control Versus State Preemption §17.1

B. Statewide Vacancy Decontrol

1. Existing Housing §17.1A

a. Phase-In Periods §17.1B

b. Lease Restrictions on Subletting Allowed §17.1C

c. Exceptions to Preemptive Effect §17.1D

2. New Construction and Single-Unit Exclusions §17.1E

a. Phase-In Periods for Condominiums and Single-Family Homes §17.1F

b. Exceptions to Preemptive Effect §17.1G

II. PRACTICE CONSIDERATIONS IN RENT CONTROL JURISDICTIONS §17.2

III. CITIES SUBJECT TO RENT CONTROL §17.3

IV. EVICTIONS AND RENT CONTROL

A. Overview §17.4

B. Just Cause for Eviction §17.5

1. Failure to Pay Rent §17.6

2. Failure to Cure Violation of Rental Agreement §17.7

3. Conduct Constituting a Nuisance §17.8

4. Use of Premises for Illegal Purpose §17.9

5. Refusal to Permit Landlord Access to Premises §17.10

6. Refusal to Execute New Lease §17.11

7. Subletting §17.12

8. Violation of Lease Restricting Occupancy §17.12A

a. Exception: Relative or Domestic Partner of Tenant §17.12B

b. Exception: Surviving Relative of Deceased Tenant §17.12C

c. Exception: Landlord Knowingly Accepts Rent From Occupant §17.12D

9. Rehabilitation of Unit §17.13

10. Demolition or Conversion of Units—Ellis Act Evictions §17.14

a. Constitutional Challenges; Preemption §17.14A

b. Effect of Other State Laws §17.14B

11. Occupancy by Owner or Owner's Relative §17.15

a. Representing Tenants in Evictions for Owner Occupancy §17.16

b. Good Faith in Owner-Occupancy Evictions §17.17

12. Grounds Not Stated in Ordinance: Termination of Manager; Foreclosure §17.18

13. Failure to Use Premises as Principal Residence §17.18A

C. Notice and Pleading Requirements §17.19

D. Burdens of Proof and Presumptions §17.20

E. Defenses to Evictions §17.21

F. Statute of Limitations §17.22

G. Damages for Unlawful Evictions §17.23

H. Attorney Fees §17.24

V. NEGOTIATING AND DEFENDING ELLIS ACT EVICTIONS

A. Preliminary Considerations

1. Scope of Ellis Act §17.25

2. Representing Organized Tenants §17.26

3. Factual Investigation

a. Review Notices and Status of All Affected Units §17.27

b. Explain Ellis Process to Client §17.28

c. Ascertain Client’s Age, Health, and Economic Status

§17.29

d. Investigate Unexpired Leases §17.30

B. Relocation Benefits §17.31

1. Benefits Available for Displaced Tenants Regardless of Income §17.32

2. Landlord’s Misrepresentation of Availability of Benefits §17.33

3. Documentation Proving Eligibility §17.34

4. Other Issues Affecting Payment of Benefits

a. Timely Payment §17.35

b. Waiver of Relocation Fees §17.36

c. One Fee per Unit §17.37

d. Services in Lieu of Fees §17.38

e. Failure to Pay Fees §17.39

C. Technical Defenses Based on Notice and Filing Requirements §17.40

D. Unexpired Leases §17.41

E. Tenant’s Options Regarding Unlawful Detainer Action Under Ellis Act

1. Answering the Complaint §17.42

2. Retaliatory Eviction Defense Limited §17.43

3. Failure to Take All Units Off Market §17.44

4. Other Possible Defenses §17.45

F. Discovering Violations After Eviction

1. Use of Ellis Act to Move Out Long-Term Tenants §17.46

2. Use of Post-Ellis Property for Home Ownership §17.47

a. Effect of State and Local Subdivision Laws §17.48

b. Effect of State and Local Laws Regulating Apartment Conversions §17.49

Back to Top

18

Special Considerations Governing Evictions From Federally Assisted Housing

Catherine M. Bishop

Nancy Ann Palandati

Deborah A. Collins

I. “FEDERALLY ASSISTED LOW-INCOME HOUSING” DEFINED §18.1

II. ASCERTAINING WHETHER TENANT LIVES IN FEDERALLY ASSISTED HOUSING AND, IF SO, WHAT KIND §18.2

III. TYPES OF FEDERAL HOUSING PROGRAMS §18.3

A. Public Housing §18.3A

B. Section 8 §18.3B

C. HUD-Assisted and -Subsidized Housing §18.3C

D. HUD-Assisted Units Threatened With Prepayment of Mortgage or Opt-Out of Section 8 Contract §18.3D

E. Rural Housing Service (RHS) Subsidized Rental Housing §18.3E

F. Low-Income Housing Tax Credit (LIHTC) §18.3F

G. Other State and Local Programs §18.3G

IV. SUBSTANTIVE RIGHTS IN EVICTION ACTIONS

A. Application of State Law §18.4

B. Evictions After Foreclosure

1. Preemptive Measures Governing Evictions §18.4A

2. Postponing Sale of Multifamily Residential Buildings §18.4B

C. Good Cause Requirement §18.5

1. Public Housing §18.6

2. Project-Based Section 8 and HUD-Assisted and -Subsidized Housing §18.7

3. Section 8 Housing Choice Voucher Program §18.8

4. Rural Housing Service (RHS) Rental Housing §18.9

5. State and Local Housing Programs for Low-Income Families §18.10

6. Other Housing Programs for Low-Income Families §18.11

D. Facts Constituting Good Cause §18.12

1. Failure to Pay Rent §18.13

2. Serious Tenant Wrongdoing, Including Criminal Activity

a. Violation of Lease or State or Federal Law §18.14

b. Drug or Criminal Activity

(1) Statutory Authorization and Standards for Eviction §18.15

(2) Federal Standards Upheld in Rucker §18.16

(3) When State Law Standards Apply §18.16A

(4) Aftermath of Rucker; Unresolved Issues §18.17

(5) Permission to Obtain Criminal Records, Drug Treatment Information §18.17A

c. Exception: Victims of Domestic Violence Protected §18.17B

3. Violation of Program Regulations §18.18

4. Examples of Improper Grounds for Evicting Tenant §18.19

E. Defending Evictions

1. Project Owner’s Abuse of Power §18.20

2. Defensive Strategies in PHA Evictions §18.20A

3. Bankruptcy Discharge of Delinquent Rent in Public or Subsidized Housing §18.20B

V. EVICTION PROCEDURES: NOTICE AND ADMINISTRATIVE HEARING OR MEETING §18.21

A. Notice Requirements §18.22

B. Pretermination Grievance Hearing or Meeting §18.23

C. Notice and Hearing Required Before Forfeiture Under Federal Antidrug Statute §18.24

D. Relief From Forfeiture §18.25

VI. DAMAGES MAY BE AWARDED FOR WRONGFUL EVICTION FROM FEDERALLY ASSISTED HOUSING §18.26

VII. ENJOINING EVICTIONS FROM FEDERALLY ASSISTED HOUSING §18.27

Back to Top

19

Special Considerations Governing Evictions in Commercial Tenancies

Myron Moskovitz

Clifford R. Horner

I. OVERVIEW OF UNLAWFUL DETAINER IN COMMERCIAL TENANCIES §19.1

II. THREE-DAY NOTICE TO PAY RENT OR QUIT

A. Lease Provisions May Affect Eviction Procedures §19.2

B. Statutory Requirements

1. Estimated Rent (CCP §1161.1) §19.3

2. When Rent Is Not Estimated §19.4

3. Service Requirements §19.5

4. Landlord’s Acceptance of Partial Tender of Rent §19.6

III. THREE-DAY NOTICE FOR VIOLATION OF COVENANT OTHER THAN PAYMENT OF RENT §19.7

A. Covenants Restricting Assignments

1. Common Law Rules §19.8

2. Statutory Law §19.9

B. Covenants Regarding Tenant Improvements §19.9A

C. Covenants Restricting Change in Use §19.10

IV. TERMINATION NOTICES FOLLOWING FORECLOSURE §19.10A

V. TERMINATION UNDER EXPRESS LEASE PROVISIONS §19.10B

VI. DEFENDING EVICTION BY ASSERTING BREACH OF LEASE BY LANDLORD

A. Covenant to Repair; Implied Warranty of Habitability

1. Dependent Versus Independent Covenants §19.11

2. Argument Favoring Adoption of Dependent Covenant Doctrine in Commercial Leases §19.12

a. Minimize Litigation §19.13

b. Eliminate Unfair Burdens on Tenant §19.14

c. Protect Tenant's Right to Pursue Livelihood §19.15

d. No Impact on Summary Nature of Unlawful Detainer §19.16

e. Out-of-State Decisions Favor Interdependent Covenants §19.17

3. Effect of Toxic Mold Legislation §19.17A

B. Covenant of Quiet Enjoyment §19.18

C. Other Contractual Defenses §19.18A

D. Implied Warranty of Fitness §19.19

E. Implied Covenant of Good Faith §19.20

1. Duty to Maintain Third Party Leases §19.21

2. Sublessor Required to Exercise Option to Extend Master Lease §19.22

3. “No Compete” Covenant Applied to Expansion of Shopping Center §19.23

4. Good Faith Covenant Applied in Favor of Landlord §19.24

VII. NONCONTRACTUAL DEFENSES TO COMMERCIAL EVICTION ACTIONS

A. Retaliatory Eviction §19.25

B. Good Cause to Terminate Petroleum Distributorship §19.26

C. Equitable Defenses §19.27

VIII. LANDLORD’S RIGHT OF ENTRY PENDING EVICTION §19.28

Back to Top

I. EFFECT OF SALE OF PROPERTY ON UNLAWFUL DETAINER §20.1

A. Sale Before Eviction Action Is Begun §20.2

B. Sale After Eviction Action Has Begun §20.3

II. EVICTING AFTER SALE UNDER CCP §1161a §20.4

A. Use of 30-Day Notice on Residential Owner's Tenant or 60-Day or 90-Day Notice After Foreclosure §20.5

1. When 60-Day Notice Applies §20.6

2. Additional Preforeclosure Notice of Sale §20.7

3. Postponing Sale of Multifamily Residential Buildings §20.7A

4. When 90-Day Notice Applies §20.8

B. Litigating Title in Unlawful Detainer Action §20.9

C. Effect of Local Eviction Control Ordinances §20.10

D. Effect of Section 8 Eviction Controls §20.11

E. Postforeclosure Bank Eviction Policies §20.12

F. Defending Postforeclosure Evictions: Priority of Title, Title Dispute, Improper Foreclosure, or Improper Notice Following Foreclosure §20.13

III. UTILITY CUTOFFS §20.14

Back to Top

21

Effect of Filing Bankruptcy on Proceedings in Unlawful Detainer

I. EFFECT OF TENANT FILING BANKRUPTCY

A. Automatic Stay on Evictions §21.1

B. Exceptions to Stay for Residential Tenancies

1. After Entry of Judgment for Eviction §21.1A

2. When Eviction Based on Endangerment of Property or Illegal Use of Controlled Substance §21.1B

C. Significant Changes Under 2005 Act §21.1C

II. LANDLORD MAY SEEK RELIEF FROM AUTOMATIC STAY §21.2

III. PENALTY FOR IMPROPER FILING OF BANKRUPTCY §21.3

IV. LEASE CLAUSES PURPORTING TO TERMINATE LEASE ON FILING OF BANKRUPTCY §21.4

V. TERMINATION OF UTILITIES AND OTHER SERVICES §21.5

VI. ASSUMPTION OF LEASE BY TRUSTEE §21.6

VII. SECURITY DEPOSITS §21.7

VIII. DISADVANTAGES TO TENANT OF FILING FOR BANKRUPTCY §21.8

IX. FILING PETITION IN BANKRUPTCY AS TACTIC IN UNLAWFUL DETAINER ACTION §21.9

Back to Top

22

Summary Judgment

I. PURPOSE OF MOTION FOR SUMMARY JUDGMENT §22.1

II. TIMING OF MOTION §22.2

III. BURDEN OF PROOF §22.2A

IV. FACTUAL BASES FOR TENANT'S MOTION FOR SUMMARY JUDGMENT §22.3

V. MOVING PARTY'S SUPPORTING PAPERS §22.4

VI. OPPOSING PARTY'S COUNTERDECLARATIONS; ORDERS §22.5

VII. SUMMARY ADJUDICATION OF ISSUES §22.6

Back to Top

23

Discovery

I. PURPOSES OF DISCOVERY §23.1

II. STATUTORY METHODS OF DISCOVERY §23.2

III. AVAILABILITY OF DISCOVERY IN UNLAWFUL DETAINER §23.3

IV. DEFENSE STRATEGY SHOULD INCLUDE PLAN FOR DISCOVERY §23.4

V. FORMAL AND INFORMAL DISCOVERY METHODS §23.5

VI. FORMULATING A DISCOVERY PLAN

A. When to Make and Implement Plan §23.6

B. Coordinating Various Discovery Techniques §23.7

C. Timeline for Initiating Tenant Discovery Directed to Landlord §23.8

D. Actions to Take if Discovery Cannot Be Completed Before Trial Date §23.9

VII. PURSUING DISCOVERY BEFORE ACTION FILED §23.10

A. Methods of Discovery Available Before Action Is Filed §23.11

B. Procedure for Pursuing Discovery Before Action Is Filed §23.12

C. Usefulness of Pursuing Discovery Before Action Is Filed §23.13

VIII. DISCOVERY AFTER SUMMONS AND COMPLAINT ARE SERVED §23.14

A. Time Limits on Responding to Discovery Requests §23.15

B. Preventing Setting of Trial Date Before Discovery Is Complete §23.16

C. Petitioning for Writ of Mandate if Court Refuses to Extend Trial Date §23.17

IX. METHODS OF DISCOVERY §23.18

A. Oral Depositions §23.19

1. Usefulness of Depositions §23.20

2. Expense of Depositions §23.21

3. Procedure for Oral Depositions

a. When Deposition May Be Taken §23.22

b. Setting Depositions of Parties §23.23

c. Setting Depositions of Nonparties §23.24

d. Witness and Mileage Fees §23.25

e. Procedures at Deposition §23.26

f. Inspection of Documents at Deposition §23.27

g. Reviewing, Correcting, and Approving Deposition §23.28

B. Written Interrogatories §23.29

1. Usefulness of Written Interrogatories §23.30

2. Disadvantages of Written Interrogatories §23.31

3. Limit on Number of Interrogatories That May Be Propounded §23.32

4. Form: Declaration for Additional Discovery §23.33

5. Procedure for Propounding Written Interrogatories §23.34

C. Pretrial Demand for Production of Documents or Inspection §23.35

1. Usefulness of Demand for Production §23.36

2. Introduction Into Evidence of Documents Produced §23.37

3. Tactical Considerations in Requesting Production §23.38

4. Protective Orders Against Request for Production §23.39

D. Requests for Admissions §23.40

1. Usefulness of Requests for Admissions §23.41

2. Procedure for Requests for Admissions §23.42

3. Form: Declaration in Support of Request for Additional Admissions §23.43

4. Effect of Failure to Respond to Request for Admissions §23.44

5. Effect of Failure to Admit Fact Later Found True §23.45

6. Requests for Admissions May Not Be Combined With Other Discovery Requests §23.46

7. Effect of Admission Made in Response to Request §23.47

8. Admissions and Responses Are Not Filed But Retained by Parties §23.48

X. SANCTIONS FOR REFUSAL TO MAKE DISCOVERY §23.49

A. Categories of Sanctions That May Be Imposed §23.50

B. What Constitutes Misuse of Discovery Process §23.51

C. Specific Sanctions That Court May Impose §23.52

Back to Top

24

Rights of Occupants Not Named in Lease

I. OCCUPANTS WHO ARE NOT NAMED IN LEASE §24.1

II. PREJUDGMENT CLAIM OF RIGHT TO POSSESSION §24.2

A. Service of Prejudgment Claim to Right to Possession Form

1. Service by Marshal, Sheriff, or Process Server §24.3

2. Time of Service §24.4

3. Service on Occupants Other Than Tenant or Subtenant §24.5

B. Effect of Proper Service by Landlord of Prejudgment Claim Form §24.6

C. Effect of Inadequate Service by Landlord of Prejudgment Claim Form §24.7

D. Judicial Council Form CP10.5: Prejudgment Claim of Right to Possession §24.8

III. POSTJUDGMENT CLAIM OF RIGHT TO POSSESSION §24.9

A. Removal of Occupant by Sheriff or Marshal §24.10

B. Procedure by Occupant in Making Postjudgment Claim of Right to Possession §24.11

C. Judicial Council Form CP10: Claim of Right to Possession and Notice of Hearing §24.12

IV. HEARING ON CLAIM OF RIGHT TO POSSESSION §24.13

V. PROCEDURE AT HEARING ON CLAIM OF RIGHT TO POSSESSION §24.14

VI. PROCEEDING WITH ENFORCEMENT OF WRIT OF POSSESSION §24.15

Back to Top

Trial

I. SETTING CASE FOR TRIAL

A. Request and Counter-Request to Set Trial §25.1

B. Setting Date for Trial §25.2

C. Effects of Local Practices §25.3

1. Trial by Temporary Judge §25.4

2. Procedure After Trial Date Is Set §25.5

D. Resetting Trial Date §25.6

1. Procedure If Parties Do Not Agree on New Trial Date §25.7

2. Determining Whether Moving Party Has Shown Good Cause §25.8

3. Determining Whether There Is Reasonable Probability Plaintiff Will Prevail at Trial §25.9

4. Determining Damages Landlord Might Suffer §25.10

5. Reduction of Damages Based on Diminution of Value or Setoff §25.11

6. Order to Deposit Potential Damages §25.12

7. Advancing Trial Date on Tenant’s Failure to Make Deposit §25.13

8. Costs of Escrow Recoverable by Prevailing Party §25.14

9. Distribution of Funds Held in Escrow After Trial §25.15

II. IF TENANT VACATES PREMISES BEFORE TRIAL §25.16

III. PRETRIAL CONFERENCE §25.17

IV. RIGHT TO JURY TRIAL §25.18

A. Jury Instructions §25.19

B. Waiver of Jury Trial

1. Bases for Waiver §25.20

2. Requesting Jury Trial After Waiver §25.21

3. Tenant’s Right to Jury Trial on Equitable Issues §25.22

a. Examples of Legal Issues §25.23

b. Examples of Equitable Defenses §25.24

C. Jury Verdicts

1. General and Special Verdicts §25.24A

2. Judgment Based on Jury Verdict §25.24B

V. DISQUALIFYING JUDGE §25.25

A. Challenge for Cause (CCP §170.1) §25.26

1. Conditions That May Not Be Used as Grounds to Disqualify Judge §25.27

2. Bias or Prejudice §25.28

3. Procedure for Disqualification §25.29

B. Peremptory Challenges (CCP §170.6)

1. Grounds for Challenge §25.30

2. Procedure for Peremptory Challenges §25.31

3. Time Limits for Moving to Challenge §25.32

4. Effect of Challenge §25.33

C. Tactical Considerations §25.34

VI. SUBPOENAS

A. Subpoenas for Witnesses §25.35

B. Subpoena Not Necessary to Require Attendance of Party or Agent §25.36

C. Service of Subpoena §25.37

D. Fees for Appearing in Court in Response to Subpoena §25.38

E. Subpoena Duces Tecum (Books and Papers) §25.39

1. Service of Subpoena Duces Tecum; Affidavit of Good Cause Necessary §25.40

2. Fees for Appearing in Court in Response to Subpoena Duces Tecum §25.41

3. Subpoena Duces Tecum Not Necessary for Party §25.42

F. Penalties for Disobeying Subpoena §25.43

VII. EVIDENCE PROBLEMS

A. Prima Facie Case; Nonsuit §25.44

B. Proof of Tenant's Possession §25.45

C. Proof of Service of Notice §25.46

D. Proof of Rent Due §25.47

E. Judicial Notice §25.48

F. Use of Books and Records §25.49

G. Laying Foundation for Admission of Business Record §25.50

H. Proof of Damages §25.51

I. Waiver of Rent During Trial §25.52

J. Proving Retaliatory Eviction §25.53

1. Strength of Retaliatory Motive §25.54

2. Evidence of "Just Cause" to Evict §25.55

3. Evidence of Retaliatory Motive

a. Evidence Inferred by Conduct §25.56

b. Indirect Evidence §25.57

K. Fees for Appointment of Interpreter §25.58

VIII. TRIAL BRIEFS §25.59

IX. CONTINUANCES §25.60

A. Grounds for Continuance §25.61

1. Unavailability of Counsel §25.62

2. Unavailability of Party §25.63

3. Unavailability of Witness §25.64

4. Other Statutory Grounds for Granting Continuance §25.65

5. Unexpected Testimony §25.66

B. Procedure for Obtaining Continuance §25.67

1. Good Cause Required §25.67A

2. Stipulation for Continuance §25.67B

3. Conditions for Obtaining Continuance §25.67C

4. Appealability of Order Denying Continuance §25.67D

X. DEFAULTS AT TRIAL §25.67E

XI. CONFORMING PLEADINGS TO PROOF

A. General Law for Ordinary Civil Actions §25.68

B. Special Law for Unlawful Detainer Complaints

1. Amendment Based on Trial Evidence §25.68A

2. Amendments Before Trial Excluded §25.68B

3. Permissible Scope of Amendments §25.68C

C. Amended Versus Supplemental Complaint §25.68D

XII. STATEMENT OF DECISION §25.69

Back to Top

26

Judgment

I. JUDGMENTS IN UNLAWFUL DETAINER ACTIONS §26.1

II. CONDITIONING JUDGMENT FOR TENANT ON PAYMENT OF RENT §26.2

III. TENANT MUST BE IN POSSESSION §26.3

IV. WHAT COURT CAN AWARD

A. Judgment Can Grant Possession of Premises §26.4

B. “Rent” and “Damages” §26.5

1. Determining Whether Amount Due Is Rent or Damages; Period Covered §26.6

2. Rent §26.7

3. Apportionment of Rent §26.8

4. Damages

a. Damages Occurring Before Holdover §26.9

b. Reasonable Rental Value During Holdover §26.10

c. Damages Against Subtenant §26.11

d. Damages After Judgment §26.12

e. Statutory Damages for Malicious Holdover §26.13

C. Forfeiture §26.14

D. Notice May Specify Election to Declare Forfeiture §26.15

E. Interest May Be Awarded §26.16

F. Costs May Be Awarded §26.17

G. Attorney Fees Authorized by Lease or Statute §26.18

1. Reciprocity of Attorney Fee Provision §26.19

2. Award of Fees Under Invalid Rental Agreement §26.20

3. Prevailing Party §26.21

4. Entitlement to Attorney Fees on Tender and Deposit of Amount Owed §26.22

5. Prevailing Party When Tenant Raises Habitability as Affirmative Defense §26.23

6. Size of Fee Award; Local Fee Schedules §26.24

7. Fees Awardable After Settlement Offer Rejected §26.25

8. Fees Awardable Beyond Court’s Jurisdictional Limit §26.26

9. Fees Awardable to Public Interest Attorneys §26.27

10. Fees Awardable for All Issues Argued §26.28

11. Attorney Fees Payable to Party—Not to Attorney §26.29

12. Attorney Fees Awardable as Sanctions Regardless of Lease Provision §26.30

13. Effect of Voluntary Dismissal §26.31

14. Fees Awardable for Enforcement of Right Important to Public Interest §26.32

15. Procedures for Requesting Fees §26.33

16. Related Statutes Providing for Award of Attorney Fees §26.34

H. Limitation on Award for Judgments in Municipal Court of Less Than $10,000 §26.35

I. Witness Fees May Be Awarded §26.36

J. Costs of Execution of Judgment May Be Recovered §26.37

V. EFFECT OF JUDGMENT ON CONSUMER CREDIT REPORTING §26.38

VI. RES JUDICATA AND COLLATERAL ESTOPPEL EFFECT OF JUDGMENT §26.38A

VII. UNLAWFUL DETAINER JUDGMENT FORMS

A. Form: Order for Judgment for Defendant Conditioned on Payment of Rent After Trial (Warranty of Habitability) §26.39

B. Form: Judgment—Unlawful Detainer (Judicial Council Form UD-110) §26.40

C. Form: Judgment—Unlawful Detainer Attachment (Judicial Council Form UD-110S) §26.41

D. Form: Stipulation for Entry of Judgment (Unlawful Detainer) (Judicial Council Form UD-115) §26.42

Back to Top

27

Posttrial Motions

I. POSTTRIAL MOTIONS COVERED §27.1

II. FIVE-DAY STATUTORY STAY OF EXECUTION (FOR APPLICATION FOR RESTORATION OF POSSESSION) §27.2

III. DISCRETIONARY STAY OF EXECUTION

A. Pending Hearing on Posttrial Motions §27.3

B. Temporary Stay Based on Hardship §27.4

C. Form: Ex Parte Application for Stay of Execution §27.5

D. Form: Memorandum in Support of Ex Parte Application for Stay of Execution §27.6

IV. MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT §27.7

A. Grounds for Judgment Notwithstanding Verdict §27.8

B. Procedure for Making Notice of Motion §27.9

C. Time of Ruling on Motion §27.10

D. Form: Notice of Motion for Judgment Notwithstanding Verdict §27.11

E. Form: Order Granting or Denying Judgment Notwithstanding Verdict §27.12

V. MOTION FOR NEW TRIAL §27.13

A. Grounds for Motion for New Trial §27.14

B. Court’s Power to Vacate or Modify Judgment §27.15

C. Notice of Motion for New Trial §27.16

D. Time for Making Motion for New Trial §27.17

E. Form: Notice of Motion for New Trial §27.18

F. Form: Declaration in Support of Notice of Motion for New Trial §27.19

G. Hearing on Motion §27.20

H. Court's Time to Rule on Motion §27.21

VI. MOTION TO SET ASIDE AND VACATE JUDGMENT §27.22

A. Notice of Motion §27.23

B. Time for Making Motion §27.24

C. Form: Notice of Motion to Vacate Judgment and Enter Different Judgment §27.25

D. Form: Order Granting Motion to Vacate Judgment and Enter Different Judgment (CCP §663) §27.26

VI. APPLICATION FOR RELIEF FROM FORFEITURE §27.27

A. Grounds for Relief From Forfeiture §27.28

B. Rent Must Be Paid and Other Covenants Performed §27.29

C. Procedure for Seeking Relief From Forfeiture §27.30

D. Form: Application for Relief From Forfeiture §27.31

E. Effect of Grant or Denial of Relief §27.32

Back to Top

28

Enforcement of Judgment—Removing Tenant and Tenant’s Belongings

I. REMOVING TENANT §28.1

A. Contents of Writ §28.2

B. Sending Scare Notice to Tenant After Judgment Is Entered §28.3

C. Procedures for Serving and Enforcing Writ of Possession §28.4

D. Sheriff Must Evict if Tenant Does Not Vacate Within 5 Days §28.5

E. Effect of Failure by Sheriff to Act by Return Date of Writ §28.6

F. Judicial Council Form EJ-130: Writ of Possession of Real Property §28.7

II. SHERIFF’S DEPARTMENT PRACTICES AND CHARGES §28.8

III. DISPOSITION OF TENANT’S PERSONAL PROPERTY

A. Personal Property Not Removed by Tenant §28.9

B. Recovery of Personal Property After Eviction §28.10

C. Treating Tenant’s Personal Property as Lost or Abandoned §28.11

D. Claim by Tenant for Personal Property (CC §1965) §28.12

E. Advantages and Disadvantages of Requesting Surrender §28.13

F. Form: Claim for Return of Personal Property Under CC §1965 §28.14

IV. DISPOSITION OF LOST PROPERTY §28.15

V. DISPOSITION OF PROPERTY ABANDONED BY TENANT §28.16

A. Landlord Must Store Abandoned Property in Safe Place §28.17

B. Notice Requirements for Disposal of Abandoned Property §28.18

C. Release of Property to Owner on Payment of Costs §28.19

D. Storage Costs §28.20

E. Sale of Unclaimed Property; Liability of Landlord §28.21

VI. EXECUTION ON TENANT'S PERSONAL PROPERTY IN LANDLORD'S POSSESSION §28.22

VII. SETTING ASIDE IMPROPER EXECUTION SALE §28.23

VIII. SUPPLEMENTAL COST BILL §28.24

IX. MOTION TO QUASH OR RECALL WRIT OF EXECUTION §28.25

X. CLAIM OF EXEMPTION §28.26

A. Judicial Council Form EJ-160: Claim of Exemption §28.27

B. Hearing on Objections to Claim of Exemption §28.28

C. Judgment on Claim of Exemption §28.29

XI. WAGE GARNISHMENTS §28.30

Back to Top

I. APPEAL PROCEDURES §29.1

A. Limited Civil Cases: Timeline for Action After Entry of Judgment §29.2

B. Unlimited Civil Cases: Timeline for Action After Entry of Judgment §29.3

II. APPEALABLE JUDGMENTS AND ORDERS §29.4

III. VACATING PREMISES DOES NOT MOOT TENANT'S APPEAL §29.5

IV. FRIVOLOUS APPEALS §29.6

V. OBTAINING IMMEDIATE TEMPORARY STAY OF ENFORCEMENT OF JUDGMENT §29.7

VI. STAY PENDING APPEAL §29.8

A. Evaluating Need for Stay Pending Appeal §29.9

B. Proper Judge §29.10

C. Grounds on Which Stay May Be Granted §29.11

VII. UNDERTAKING ON APPEAL §29.12

VIII. FORM: WAIVER OF SECURITY §29.13

IX. FORM: NOTICE OF MOTION FOR STAY §29.14

X. REVIEW OF DENIAL OF STAY §29.15

XI. CLEAR ABUSE OF DISCRETION MUST BE SHOWN §29.16

XII. SCOPE OF TRIAL COURT JURISDICTION PENDING APPEAL §29.17

XIII. EVALUATING WHETHER TO APPEAL §29.18

XIV. SUMMARY OF APPELLATE PROCEDURE

A. Applicable Rules §29.19

B. Appeals From Limited Civil Cases §29.20

C. Appeals From Other Superior Court Actions §29.21

D. Standard of Review §29.22

E. Initiating Appeal

1. Notice of Appeal §29.23

2. Form: Notice of Appeal §29.24

3. Form: Notice of Appeal/Cross-Appeal (Limited Civil Case) (Judicial Council Form APP-102) §29.25

4. Form: Notice Designating Record on Appeal (Limited Civil Case) (Judicial Council Form APP-103) §29.26

5. Filing Deadlines Applicable to Appeals From Limited Civil Cases §29.27

6. Filing Deadlines Applicable to Other Superior Court Judgments §29.28

7. Record on Appeal §29.29

a. Electronic Recording or Agreed Statement §29.30

b. Form: Proposed Statement on Appeal (Limited Civil Case) (Judicial Council Form APP-104) §29.31

c. Requesting Reporter’s Transcript §29.32

F. Filing Briefs in Appellate Division of Superior Court §29.33

G. Filing Briefs in Court of Appeal §29.34

H. Purpose of Oral Argument §29.35

I. Decision on Appeal and Rehearing §29.36

J. Relief for Tenant After Reversal §29.37

K. Costs and Attorney Fees on Appeal §29.38

L. Abandonment of Appeal §29.39

M. Transfer to District Court of Appeal

1. Transfer of Appeal of Limited Civil Case From Superior Court to Court of Appeal §29.40

2. When Transfer Is Denied by District Court §29.41

Back to Top

30

Civil Writs

I. CIVIL WRITS IN GENERAL §30.1

II. NATURE AND SCOPE OF WRIT §30.2

A. Conditions Under Which Writ of Mandate Will Issue §30.3

B. Alternative and Peremptory Writs of Mandate §30.4

C. Factors in Deciding Whether to Seek Writ §30.5

III. OBTAINING A STAY OF EXECUTION PENDING APPEAL OR DECISION ON PETITION FOR WRIT OF MANDATE §30.6

IV. PERSUADING COURT THAT WRIT SHOULD BE GRANTED §30.7

A. Inadequacy of Other Remedy Must Be Shown §30.8

B. No Direct Appeal §30.9

C. Common Situations in Which Relief by Writ Is Sought §30.10

D. Direct Appeal Possible §30.11

V. PROCEDURE IN OBTAINING WRIT

A. Relief Must First Be Sought in Lower Court §30.12

B. Court in Which Writ Petition Must Be Filed §30.13

C. Applicable Statutes and Rules of Court §30.14

D. Names of Parties §30.15

E. Time Limitation §30.16

F. Procedures in Superior Court §30.17

G. Pleadings in Mandamus Proceeding §30.18

1. Contents of Petition §30.19

2. Common Errors in Petitions for Writ §30.20

3. Opposition to Issuance of Writ §30.21

H. Hearing §30.22

I. Issuance of Peremptory Writ §30.23

J. Mootness §30.24

K. Damages and Costs §30.25

VI. REVIEW OF SUPERIOR COURT ACTION ON WRIT §30.26

VII. APPEAL FROM DISTRICT COURT OF APPEAL DECISION TO SUPREME

COURT §30.27

Back to Top

31

Return of Security Deposit and Disposition of Last Month’s Rent

I. TENANT’S RIGHTS IN SECURITY DEPOSIT AND LAST MONTH’S RENT §31.1

II. PAYMENTS TO LANDLORD ON SIGNING OF LEASE THAT ARE NOT CONSIDERED “SECURITY” §31.2

III. SECURITY “DISGUISED” AS ADVANCE RENT §31.3

IV. EFFECT OF DESIGNATION OF DEPOSIT AS “LAST MONTH’S RENT” RATHER THAN “SECURITY DEPOSIT” §31.4

V. LIMITATIONS ON AMOUNT OF SECURITY THAT MAY BE REQUIRED §31.5

VI. TENANT’S CLAIM TO SECURITY HAS PRIORITY OVER THAT OF LANDLORD’S CREDITORS §31.6

VII. SECURITY MAY NOT BE NONREFUNDABLE §31.7

VIII. PROVING AMOUNT OF SECURITY DEPOSIT §31.8

IX. LIMITS ON LANDLORD’S USE OF SECURITY DEPOSIT §31.9

X. LANDLORD’S DUTY TO RETURN DEPOSIT §31.10

A. Tenant’s Right to Request Inspection of Premises and Cure Deficiencies; Use of Deposit §31.10A

B. Tenant’s Right to Refund of Security Deposit Balance and Accounting §31.10B

XI. LANDLORD’S SALE OR OTHER TRANSFER OF PREMISES §31.11

XII. INTEREST ON SECURITY DEPOSIT §31.12

XIII. DAMAGES FOR LANDLORD’S IMPROPER RETENTION OF DEPOSIT §31.13

XIV. EFFECT ON UNLAWFUL DETAINER §31.14

Back to Top