

# MADERA COUNTY SUPERIOR COURT

## STATE OF CALIFORNIA

# UNLAWFUL DETAINER ANSWER PACKET

Eviction cases are called an "unlawful detainer" in court. An unlawful detainer lawsuit is the civil process a landlord can use to remove a tenant from his or her rental property and regain possession of the property from the tenant.

To respond to the eviction case, you start with filling out an *Answer* (*form UD-105*) or other response forms. This gives you the chance to tell the judge if there are any legal reasons your landlord can't evict you and tell your side of the story at a court trial.

- 1. Fill out your forms** -- Fill out the attached form *UD-105 Answer*. Please make sure to fill out your form as accurately as possible. Your landlord is the **plaintiff** and you are the **defendant**. If there's more than one defendant listed on the forms, you can all file an *Answer* together if your defenses are the same. Please make sure to read the forms inside this packet to better assist you with the process of filing your Answer.
- 2. Read the law on termination of tenancy** -- There is a packet with Selected Code Sections Regarding Termination of Tenancy available so that you can read what the law requires and what the notice must contain -- on the website or at the Self Help Center.
- 3. Have your forms reviewed** -- If you are low income, you may get further assistance from California Rural Legal Assistance. You can contact them at (559) 674-5671. Or you can ask the court's [self-help center](#) (located on the 1<sup>st</sup> Floor) to review your paperwork. You can also hire your own lawyer to review your papers or to get legal advice.
- 4. File your forms with the court clerk** -- Take your forms to the Civil Division (located on the 4<sup>th</sup> Floor). The clerk will keep the original and return file stamped copies to you. You will have to pay a filing fee. If you cannot afford the fee, you can ask for a [fee waiver](#).
- 5. Serve your papers on your landlord** -- Have someone, at least 18 years old, (NOT you) serve/deliver to your landlord a copy of your Answer. Your server can mail a copy of your Answer to your Landlord or landlord's attorney (if there is an attorney).
- 6. File your Proof of Service** -- After your server serves/delivers the copy of your Answer, have them fill out a *Proof of Service - Civil* (*form POS-040*). Your server should then give the *Proof of Service* form back to you to file with the court.

**NOTE: You can also begin the process online, from home, or on one of the public computers located in the Self-Help Office on the 1<sup>st</sup> Floor at**

<https://www.butte.courts.ca.gov/evictionunlawful-detainer-tenant>

(See attached flyer)

Revised 01/02/2024

# GET STARTED ON YOUR DOCUMENTS NOW!

You can begin the process from your phone, your computer at home, or one of the computers in the Self Help Center.

## This option is available for these case types:

- Divorce
- Request for and Response to Domestic Violence Restraining Order
- Guardianship
- Name Change
- Request for Order
- Parentage Petition and Response
- Civil Harassment Restraining Order Request and Response
- Elder Abuse Restraining Order Request and Response
- Eviction/Unlawful Detainer-Landlord/Tenant
- Petition for Custody and Support

## To get started:

- 1** Go to **www.sharpcourts.org** and click on the “**Online Resources**” tab.
- 2** Select the case type with which you need help.
- 3** We strongly recommend that you create an account so that you do not lose your work. You can note your username and password below. Keep this in a safe place!  
**Username:** \_\_\_\_\_ **Password:** \_\_\_\_\_
- 4** Fill out the prompts.
- 5** When finished click “**SAVE**”, then have the Self Help Center review your paperwork. Their information is below.

### **Madera Family Law Facilitator / Self Help Center**

200 South “G” Street, Madera, CA 93637

Mon-Fri: 8AM - 3PM

(559) 416-5520

facilitator@madera.courts.ca.gov



## **Eviction Procedural Information for Tenants:** **The Unlawful Detainer Action**

If your landlord/owner wants to evict you, he/she must take the following steps:

Step 1 : You must be given a **WRITTEN NOTICE**.

There are at least four kinds of written notices your landlord can give you, below lists the following four:

### **3-Day Notice to Pay or Quit**

This notice says you owe rent money to your landlord. It must tell you the exact amount of rent you owe. With a 3-day notice, you can either pay the rent you owe within 3 days or move out within 3 days.

### **3-Day Notice to Perform Covenant or Quit**

A “covenant” is an agreement in your written lease or rental agreement, such as “no pets allowed”. This notice says you have broken the agreement by, for example, having a dog or a bird in the rental unit. In this example, you must get rid of any pets or move out within 3 days.

### **3-Day Notice for Non-Curable Breach**

In this notice, the landlord is saying that you have done something so bad in your apartment that stopping the activity is not enough. For example, damaging the building or doing something illegal in your apartment. You do not have a choice to fix or stop what you have done. The landlord just wants you to move out within 3 days.

### **30-Day or 60-Day Notice**

This notice is used to end your tenancy. You and your household members have 30 or 60 days to move out. The landlord can give you a 30 or 60-Day Notice for any reason, except to discriminate or retaliate against you. If you lived in the unit less than one year, the landlord can give you a 30 day notice to end the tenancy. If you lived in the unit more than one year, the landlord will need to give you a 60 day notice. There is an exception for single family home if the landlord is selling the property and the buyer intends to live in the house for at least one year and satisfy other requirements.

*\*Exception:* The landlord is required to give a written reason for evicting you if you are in subsidized housing. If no reason is given, the notice is defective unless the landlord gives you a 90-day notice after notice of termination or non-renewal of the contract.

**Step 2** : If you do not do what the notice says, your landlord must still file a Summons and Complaint with the Courts. The landlord will also have to file a Plaintiff's Mandatory Cover Sheet and Supplemental Allegations.

You must be given a copy of both the Summons and Complaint. The Plaintiff's Mandatory Cover Sheet and Supplemental Allegations could be given to you at the same time as the Summons and Complaint or at a later date. This is called being "served" with the papers. You can be served in three different ways:

### **Personal Service**

You can be handed a copy of the Summons and Complaint. The landlord must try personal service first. If you refuse to accept the papers and they are dropped at your feet, you are still duly served. If your landlord is unable to serve you in this manner, there are two other ways you can be served. The landlord can have someone leave a copy of the Summons and Complaint at your home with a person "of suitable age and discretion". The landlord must also mail you a copy of the Summons and Complaint. This is called "Substitute Service."

### **Service by Posting**

After getting the Court's approval, your landlord can have someone post the Summons and Complaint in an obvious place at your home. The landlord must also mail you a copy of the Summons and Complaint.

### **After being served**

You should read the Summons and Complaint to see what the Plaintiff/landlord/owner is seeking. If you feel the accusations are not correct you may want to file an Answer in your defense. If you want to dispute the accusations on the Complaint, you will need to file an Answer within 5 court days after being served. If you were served by "substitute service" or "Posting", you will have 10 extra days. You should contact an attorney or the Self-Help Center to determine your deadline to file your Answer. If you do not file your Answer within the timeframe, the landlord could file a default judgment against you preventing you from filing an Answer. It will be much harder trying to set aside the default judgment and explaining to the court why you did not file your Answer within the statutory timeframe.

### **The Warranty of Habitability**

The landlord is required to keep your premises in a safe and sanitary condition. The Courts will not let you sign away these rights. Your landlord must meet the housing codes that affect health and safety.

You may want to read the Landlord and Tenants Guide at the website below.

<http://www.dca.ca.gov/publications/landlordbook/catenant.pdf>

## **Waiver of Eviction Notice**

If your landlord accepts rent for a period after the 3-Day or 30-Day/60-Day Notice expired, this cancels the Notice and your rental agreement will continue to be in effect. You can stay in your place.

If your landlord served you with a 3-Day Notice to Pay or Quit and refuses to take the rent money during the 3-day period, you may want to seek legal advice to see if you may use this as a defense.

## **Retaliatory Eviction**

California Law protects tenants from retaliation because a tenant has lawfully and peacefully used any right available under the law. Refer to California Civil Code Section 1942.5.

## **Discrimination**

A Landlord cannot discriminate against tenants for the following reasons: on the grounds of race, color, sex, religion, national origin, sexual orientation, disability, marital status, familial status (families with children) or because you are receiving some form of public assistance. Refer to California Civil Code Section 51 and Civil Code Section 52.

## **Repair and Deduct**

California Law allows you to repair certain things yourself and deduct the cost from your next month's rent. You are required to give written notice requesting the repairs from the landlord and give them a reasonable opportunity to make the repairs. If they fail to make the repairs within a reasonable amount of time, then you make the repairs and keep a copy of the receipt. When paying the following month's rent, you should include a copy of the repair receipt and the difference in rent to pay that month's rent. Refer to the Landlord and Tenants Guide at the website below to see what is allowed and what is not allowed.

<http://www.dca.ca.gov/publications/landlordbook/catenant.pdf>

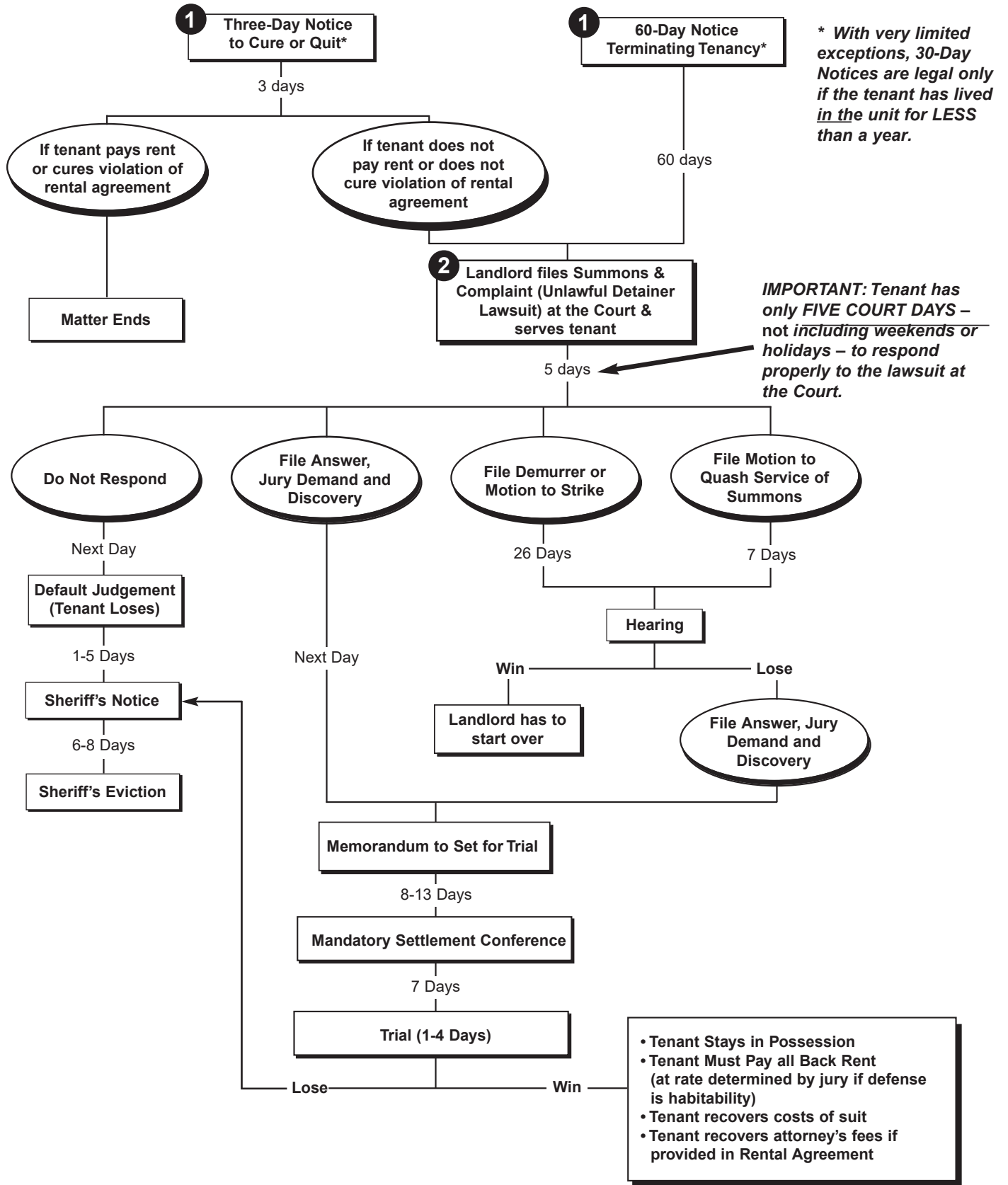
## **Other Affirmative Defenses -- Defective Notice**

A Notice of Eviction (a 3-Day or 30-Day Notice) may be defective if: (a) the notice was not in writing by a landlord or manager, or (b) the notice was not given to you according to the rules for service (you can be served in person, or the notice can be left with someone at your home that is "of suitable age and discretion" like a teenager), or a copy can be posted on your door and another mailed to you, or (c) the notice has the wrong name and address on it, or (d) the notice states that too much rent is due. Refer to the Landlord and Tenant Guide for further information. You can also review Civil Code Sections 1940 through 1954.06 that deals with tenancies. Termination of tenancies can be found at Code of Civil Procedure Section 1161 and 1179.3.5. Notice requirements can be found at Civil Code Sections 1946 through 1946.2.

Also see <http://www.dca.ca.gov/publications/landlordbook/catenant.pdf>

# UNLAWFUL DETAINER PROCEDURES & TIME CHART

Note: There are two steps to an eviction in California, and always in this order:  
**1** Proper, legal, written notice; and ...  
**2** Unlawful Detainer ("Eviction") Lawsuit



ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:  STATE: ZIP CODE: FAX NO.:	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF MADERA</b> STREET ADDRESS: 200 South G Street MAILING ADDRESS: CITY AND ZIP CODE: Madera, California 93637 BRANCH NAME: Civil Division		
PLAINTIFF: DEFENDANT:		
<b>ANSWER—UNLAWFUL DETAINER</b>		CASE NUMBER:

1. Defendant (*all defendants for whom this answer is filed must be named and must sign this answer unless their attorney signs*):

answers the complaint as follows.

2. **DENIALS (Check ONLY ONE of the next two boxes.)**

- a.  **General Denial** (*Do not check this box if the complaint demands more than \$1,000.*)  
Defendant generally denies each statement of the complaint and of *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101).
- b.  **Specific Denials** (*Check this box and complete (1) and (2) below if complaint demands more than \$1,000.*)  
Defendant admits that all the statements of the complaint and of *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are true EXCEPT:
- (1) **Denial of Allegations in Complaint (form UD-100 or other complaint for unlawful detainer)**
- (a) Defendant claims the following statements of the complaint are false (*state paragraph numbers from the complaint or explain below or, if more room needed, on form MC-025*):  
 Explanation is on form MC-025, titled as Attachment 2b(1)(a).
- (b) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (*state paragraph numbers from the complaint or explain below or, if more room needed, on form MC-025*):  
 Explanation is on form MC-025, titled as Attachment 2b(1)(b).
- (2) **Denial of Allegations in Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer (form UD-101)**
- (a)  Defendant did not receive plaintiff's *Mandatory Cover Sheet and Supplemental Allegations* (form UD-101). (*If not checked, complete (b) and (c), as appropriate.*)
- (b) Defendant claims the following statements on *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are false (*state paragraph numbers from form UD-101 or explain below or, if more room needed, on form MC-025*):  Explanation is on form MC-025, titled as Attachment 2b(2)(b).



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2. b. (2) (c) Defendant has no information or belief that the following statements on *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are true, so defendant denies them (*state paragraph numbers from form UD-101 or explain below or, if more room needed, on form MC-025*):
- Explanation is on form MC-025, titled as Attachment 2b(2)(c).
3. **DEFENSES AND OBJECTIONS** (NOTE: For each box checked, you must state brief facts to support it in item 3t (on page 3) or, if more room is needed, on form MC-025. You can learn more about defenses and objections at [www.courts.ca.gov/selfhelp-eviction.htm](http://www.courts.ca.gov/selfhelp-<u>eviction.htm</u>).)
- a.  (Nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.
- b.  (Nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c.  (Nonpayment of rent only) On (date): \_\_\_\_\_ before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d.  (Nonpayment of rent only) Plaintiff's demand for possession is based on nonpayment of rent due more than one year ago.
- e.  Plaintiff waived, changed, or canceled the notice to quit.
- f.  Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- g.  By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.
- h.  Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (*city or county, title of ordinance, and date of passage*):  
(Also, briefly state in item 3t the facts showing violation of the ordinance.)
- i.  Plaintiff's demand for possession is subject to the Tenant Protection Act of 2019, Civil Code section 1946.2 or 1947.12, and is not in compliance with the act. (Check all that apply and briefly state in item 3t the facts that support each.)
- (1)  Plaintiff failed to state a just cause for termination of tenancy in the written notice to terminate.
- (2)  Plaintiff failed to provide an opportunity to cure any alleged violations of terms and conditions of the lease (other than payment of rent) as required under Civil Code section 1946.2(c).
- (3)  Plaintiff failed to comply with the relocation assistance requirements of Civil Code section 1946.2(d).
- (4)  Plaintiff has raised the rent more than the amount allowed under Civil Code section 1947.12, and the only unpaid rent is the unauthorized amount.
- (5)  Plaintiff violated the Tenant Protection Act in another manner that defeats the complaint.
- j.  Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- k.  Plaintiff seeks to evict defendant based on an act—against defendant, defendant's immediate family member, or a member of defendant's household—that constitutes domestic violence, sexual assault, stalking, human trafficking, abuse of an elder or a dependent adult, or a crime that caused bodily injury, involved a deadly weapon, or used force or threat of force. (This defense requires one of the following, which may be included with this form: (1) a **temporary restraining order, protective order, or police report** that is not more than 180 days old; (2) a **signed statement from a qualified third party** (e.g., a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, psychologist, or a victim of violent crime advocate concerning the injuries or abuse resulting from these acts); or (3) another form of documentation or evidence that verifies that the abuse or violence occurred.)
- (1)  The abuse or violence was committed by a person who does not live in the dwelling unit.
- (2)  The abuse or violence was committed by a person who lives in the dwelling unit and defendant claims protection from eviction under Code of Civil Procedure section 1161.3(d)(2).
- l.  Plaintiff seeks to evict defendant based on defendant or another person calling the police or emergency assistance (e.g., ambulance) by or on behalf of a victim of abuse, a victim of crime, or an individual in an emergency when defendant or the other person believed that assistance was necessary.
- m.  Plaintiff's demand for possession of a residential property is based on nonpayment of rent or other financial obligations and (*check all that apply*)
- (1)  plaintiff received or has a pending application for rental assistance from a governmental rental assistance program or some other source relating to the amount claimed in the notice to pay rent or quit. (Health & Saf. Code, §§ 50897.1(d)(2)(B) and 50897.3(e)(2).)



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3. m. (2)  plaintiff received or has a pending application for rental assistance from a governmental rental assistance program or some other source for rent accruing since the notice to pay rent or quit. (Health & Saf. Code, §§ 50897.1(d)(2)(B) and 50897.3(e)(2).)
- (3)  plaintiff's demand for possession is based only on late fees for defendant's failure to provide landlord payment within 15 days of receiving governmental rental assistance. (Health & Saf. Code, § 50897.1(e)(2)(B).)
- n.  Plaintiff violated the COVID-19 Tenant Relief Act (Code Civ. Proc., § 1179.01 et seq.) or a local COVID-19–related ordinance regarding evictions in some other way (*briefly state facts describing this in item 3t*).
- o.  The property is covered by the federal CARES Act and the plaintiff did not provide 30 days' notice to vacate. (*Property covered by the CARES Act means property where the landlord*
- *is participating in a covered housing program as defined by the Violence Against Women Act;*
  - *is participating in the rural housing voucher program under section 542 of the Housing Act of 1949; or*
  - *has a federally backed mortgage loan or a federally backed multifamily mortgage loan.*
- p.  Plaintiff improperly applied payments made by defendant in a tenancy that was in existence between March 1, 2020, and September 30, 2021 (Code Civ. Proc., § 1179.04.5), as follows (*check all that apply*):
- (1)  Plaintiff applied a security deposit to rent, or other financial obligations due, without tenant's written agreement.
- (2)  Plaintiff applied a monthly rental payment to rent or other financial obligations that were due between March 1, 2020, and September 30, 2021, other than to the prospective month's rent, without tenant's written agreement.
- q.  Plaintiff refused to accept payment from a third party for rent due. (Civ. Code, § 1947.3; Gov. Code, § 12955.)
- r.  Defendant has a disability and plaintiff refused to provide a reasonable accommodation that was requested. (Cal. Code Regs., tit. 2, § 12176(c).)
- s.  Other defenses and objections are stated in item 3t.
- t. (*Provide facts for each item checked above, either below or, if more room needed, on form MC-025*):
- Description of facts or defenses are on form MC-025, titled as Attachment 3t.

#### 4. OTHER STATEMENTS

- a.  Defendant vacated the premises on (*date*):
- b.  The fair rental value of the premises alleged in the complaint is excessive (*explain below or, if more room needed, on form MC-025*).
- Explanation is on form MC-025, titled as Attachment 4b.
- c.  Other (*specify below or, if more room needed, on form MC-025*):
- Other statements are on form MC-025, titled as Attachment 4c.

#### 5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.
- b. costs incurred in this proceeding.
- c.  reasonable attorney fees.

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5. d.  that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.
- e.  Other (specify below or on form MC-025):  
 All other requests are stated on form MC-025, titled as Attachment 5e.

6. Number of pages attached: \_\_\_\_\_

**UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400–6415)**

7. (Must be completed in all cases.) An **unlawful detainer assistant**  did not  did for compensation give advice or assistance with this form. If defendant has received **any** help or advice for pay from an unlawful detainer assistant, state
- a. assistant's name: \_\_\_\_\_ b. telephone number: \_\_\_\_\_
- c. street address, city, and zip code: \_\_\_\_\_
- d. county of registration: \_\_\_\_\_ e. registration number: \_\_\_\_\_ f. expiration date: \_\_\_\_\_

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

_____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF DEFENDANT OR ATTORNEY)
_____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF DEFENDANT OR ATTORNEY)
_____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF DEFENDANT OR ATTORNEY)

**VERIFICATION**

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

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

Date: _____	▶	_____
_____		(SIGNATURE OF DEFENDANT)
Date: _____	▶	_____
_____		(SIGNATURE OF DEFENDANT)
Date: _____	▶	_____
_____		(SIGNATURE OF DEFENDANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> Madera STREET ADDRESS: 200 South G Street MAILING ADDRESS: Same CITY AND ZIP CODE: Madera CA 93637 BRANCH NAME: Civil Division	CASE NUMBER:
Plaintiff/Petitioner: Defendant/Respondent:	JUDICIAL OFFICER:
<b>PROOF OF SERVICE-CIVIL</b> <b>Check method of service (only one):</b> <input type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax	DEPARTMENT:

**Do not use this form to show service of a summons and complaint or for electronic service.  
See USE OF THIS FORM on page 3.**

1. At the time of service I was over 18 years of age **and not a party to this action.**
2. My residence or business address is:
3.  The fax number from which I served the documents is *(complete if service was by fax)*:
4. On *(date)*: I served the following **documents** *(specify)*:  
  
 The documents are listed in the *Attachment to Proof of Service-Civil (Documents Served)* (form POS-040(D)).
5. I served the documents on the **person or persons** below, as follows:
  - a. Name of person served:
  - b.  *(Complete if service was by personal service, mail, overnight delivery, or messenger service.)*  
Business or residential address where person was served:
  - c.  *(Complete if service was by fax.)*  
Fax number where person was served:
- The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service-Civil (Persons Served)* (form POS-040(P)).
6. The documents were served by the following means *(specify)*:
  - a.  **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and eight in the evening.

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6. b.  **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
  - (2)  placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*):
- c.  **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d.  **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)
- e.  **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME OF DECLARANT)

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

*(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)*

**DECLARATION OF MESSENGER**

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and eight in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (*date*):

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

Date:

\_\_\_\_\_  
(NAME OF DECLARANT)

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

## INFORMATION SHEET FOR PROOF OF SERVICE-CIVIL

*(This information sheet is not part of the official proof of service form and does not need to be copied, served, or filed.)*

### USE OF THIS FORM

This form is designed to be used to show proof of service of documents by (1) personal service, (2) mail, (3) overnight delivery, (4) messenger service, or (5) fax.

This proof of service form should **not** be used to show proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Also, this proof of service form should **not** be used to show proof of electronic service. For that purpose, use *Proof of Electronic Service* (form POS-050).

Certain documents must be personally served. For example, an order to show cause and temporary restraining order generally must be served by personal delivery. You must determine whether a document must be personally delivered or can be served by mail or another method.

### GENERAL INSTRUCTIONS

A person must be over 18 years of age to serve the documents. The person who served the documents must complete the Proof of Service. **A party to the action cannot serve the documents.**

The Proof of Service should be typed or printed. If you have Internet access, a fillable version of this proof of service form is available at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).

*Complete the top section of the proof of service form as follows:*

First box, left side: In this box print the name, address, and telephone number of the person for whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as the address on the documents that you served.

Third box, left side: Print the names of the plaintiff/petitioner and defendant/respondent in this box. Use the same names as are on the documents that you served.

Fourth box, left side: Check the method of service that was used. You should check only one method of service and should show proof of only one method on the form. If you served a party by several methods, use a separate form to show each method of service.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The case number should be the same as the case number on the documents that you served.

Third box, right side: State the judge and department assigned to the case, if known.

*Complete items 1-6:*

1. You are stating that you are over the age of 18.
2. Print your home or business address.
3. If service was by fax service, print the fax number from which service was made.
4. List each document that you served. If you need more space, check the box in item 4, complete the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)), and attach it to form POS-040.
5. Provide the names, addresses, and other applicable information about the persons served. If more than one person was served, check the box on item 5, complete the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)), and attach it to form POS-040.
6. Check the box before the method of service that was used, and provide any additional information that is required. The law may require that documents be served in a particular manner (such as by personal delivery) for certain purposes. Service by fax generally requires the prior agreement of the parties.

**You must sign and date the proof of service form. By signing, you are stating under penalty of perjury that the information that you have provided on form POS-040 is true and correct.**