

# Intake Assessment/Triage in Unlawful Detainer Cases

## Ventura Superior Court Self-Help Legal Access Center

This list of questions to ask people coming to the SHLA Center in unlawful detainer (eviction) cases is designed to help assess their situation, inform them of their options, help them to understand the consequences of their choices, and where appropriate, refer them to other resources.

### Preliminary Questions:

1. **Are you named as a defendant in the summons and complaint?** Yes No
  - a. If “yes” skip to Question 2. If “no” continue with (b):
  - b. **If you are not named in the lawsuit, does the summons and complaint include “Doe” defendants and was it served with a prejudgment claim to right of possession (Form CP 10.5)?** Yes No
    - (1) If “yes” continue with (2) below, if “no,” explain that the court order for possession, if the plaintiff (landlord) wins the case, can only order people to leave the property who are identified in the complaint. Therefore, the only ones who need to file a response are those named in the suit.
    - (2) If the summons and complaint included “Doe” or unknown defendants, and it was served with a prejudgment claim to right of possession, then the unnamed tenant has the option to file the prejudgment claim to right of possession to assert in court his or her right to remain on the property. Provide the booklet explaining the pros and cons of filing the prejudgment claim, and make sure the tenant understands that an unlawful detainer judgment can affect credit, and that by inserting him or herself into the case, this becomes a risk.
    - (3) If the unnamed tenant wants to proceed with filing the prejudgment claim after having reviewed the booklet, continue with question 2.
2. **When did you receive the lawsuit and how did you receive it?**
  - a. If more than 5 days ago, check to see if default has been entered. If so, continue with (1) below. If not, skip to (b).
    - (1) If default has been entered, ask the tenant when and how s/he first learned about the lawsuit, and why s/he did not file a response in time.
    - (2) Ask the tenant if s/he has a defense to the eviction, and explain that to get a default set aside, the defendant must tell the court the reason for not responding on time, and explain the reason why s/he should not be evicted. The reason must be one that the law recognizes. This means that even though a tenant may have failed to pay the rent because s/he lost a job, this is not a legal reason the court can recognize. Courts cannot require landlords to subsidize a tenant’s hardship. If the tenant can articulate a defense and a

reason for not responding on time, give the tenant a form for Motion to Set Aside Default / Vacate Default Judgment, and the instructions for bringing an ex parte motion. Have the tenant continue with 3 below. **NOTE:** The correct way to bring a motion when there is not sufficient time to give statutory notice is to bring an ex parte motion for order shortening time to have heard the primary motion, in this case, a motion to set aside default/vacate default judgment. This procedure is too complicated for most self-represented litigants, and the time to file is so short, that we generally have them just file the motion to set aside/vacate on an ex parte basis, and the local court form provides for this option. **However**, to bring the motion on an ex parte basis the tenant must file his or her moving papers by noon the court day before the motion is heard, and must give telephone notice to the other side by 10:00 a.m. the court day before the motion is to be heard. Therefore, if the tenant has waited until the last minute (for example, the lock-out is to occur the next day), there is no time for the tenant to bring the motion prior to the lockout, and s/he should be prepared to move so belongings don't get locked up, and pursue the motion after having moved out, if inclined to do so.

- b. If default has not been entered, but tenant states s/he was substituted served, or improperly served, caution that if the process server states under penalty of perjury on the proof of service that the tenant was personally served, and that proof of service is filed with the court, the court may enter default on the 6<sup>th</sup> day following the date on the proof of service, because it has no way of knowing the information to be inaccurate. Therefore, if the tenant chooses to wait to file an answer, and s/he has no defense to the case, a default may be entered and it may be difficult or impossible to get it set aside.
  - (1) If the tenant wants to bring a motion to quash service, direct him/her to the law library and give the list of resource materials as we do not have a form motion to quash.
  - (2) If the tenant wants to file an answer, go to 3, below.

### **Questions Pertaining to Filing the Answer**

3. **Are you still living on the property or have you already moved out?** If the tenant is still living on the property, go to 4, below, if the tenant has moved out:
  - a. **When did you move out?** The tenant can check box 4a on page two of the answer and state when he or she vacated the premises.
  - b. **Was the landlord aware you moved out?** If the tenant vacated the premises before the landlord filed the unlawful detainer action, and the tenant gave the keys to the landlord, confirming s/he vacated, but the landlord sued for unlawful detainer anyway, the tenant may be able to request damages for bad faith action, since possession was not at issue at the time the landlord filed. This can be done under section 5e of the answer. Show the tenant CCP§§128.5 -128.7 and ask if they want to include a request for

relief under these code sections. DO NOT MAKE ANY RECOMMENDATIONS THAT THEY DO SO.

4. **Is the landlord suing you for more than \$1,000 in back rent?** (look at paragraph 17 of the Judicial Council form Complaint-Unlawful Detainer, or if the complaint is self-drafted, then the prayer for relief, to see how much the plaintiff is requesting). If no, the defendant can mark the box for 2(a) on the answer form and go on to the section on affirmative defenses in paragraph 3 of the answer. If yes:
  - a. If the plaintiff is requesting more than \$1,000 the defendant must specifically respond to each paragraph of the complaint. To do so the defendant marks box 2(b) on the answer, and then must list the paragraphs of the complaint by number that are false, or that the tenant has no way of knowing are true or false.
  - b. Make sure when reviewing the tenant's answer that s/he has included the disputed paragraphs of the complaint consistent with what the tenant has told you, and point out to the tenant any discrepancy so s/he can fix it if s/he wants to.
  
5. **What is the reason for the eviction?**
  - a. If for non-payment of rent, ask the following:
    - (1) **Did the landlord fail to provide working plumbing, safe gas and electricity, heat, hot and cold running water, doors and windows that lock, trash receptacles and a place safe, clean and free of leaks and vermin infestation?** If yes, skip to (2), if no:
      - (a) **Did you notify the landlord in writing of the problem?**
      - (b) **Did you notify the landlord in writing that you would withhold the rent if the problem was not fixed?**
      - (c) **Was the cost of repair more than one month's rent?**
      - (d) **Did you escrow the rent money?** For the habitability defense the tenant must have had the rent, but withheld it because the landlord would not fix the habitability problems. The tenant will need to be able to show proof to the court that the landlord was notified, and refused to make the repairs, and that the tenant had the rent, but withheld it because the landlord would not make the repairs. The tenant can raise this defense without having proof, but will need to provide proof at the time of trial if the tenant is to have a chance at prevailing on this defense.
      - (e) **Did you make a complaint to the department of building and safety?** Having a certified copy of a building inspector's report can help prove substandard conditions.
    - (2) **Did you make repairs to the property and deduct the amount of the repairs from the rent?** If no, go on to (3); if yes:
      - (a) **Was the amount of repair less than one month's rent?**

- (b) **Did you notify the landlord in writing that you would be making the repair and deducting it if the landlord did not make the repair?**
    - (c) **Do you have receipts for the repair?**
  - (3) **Did the landlord serve you with a 3-day notice to pay rent or quit?** If no, go on to b; if yes:
    - (a) **Did the notice request money other than rent?** A 3-day notice to pay rent or quit can only request rent. Late fees, utility reimbursement, etc. must be requested on a 3-day cure or quit.
    - (b) **Did the notice meet the statutory requirements?** The notice must include the amount of rent, the time period for which rent is claimed, the person and location where it is to be paid and the dates and times in which to pay (see CCP § 1161 (2) for details)
    - (c) **Did you attempt to pay the rent within the 3 days?**
    - (d) **Did the landlord except partial payment after the 3 day notice was served, but before filing the lawsuit?** This may constitute a waiver of the 3-day notice.
- b. **Did the landlord serve you with a 3-day notice to cure or quit?**
- c. **Did the landlord serve you with a 30 or 60 day notice to quit?** If no, skip to d below; if yes:
  - (1) **Did you live on the property a year or longer?** A rent paying tenant is entitled to a 60 day notice to quit if the tenant has lived on the property for a year or longer. Otherwise it is a 30 day notice.
  - (2) **Did you have an agreement to pay rent?** For a tenant at will (one who just stays with the permission of the property owner or person in possession of the property) only a 30 day notice is required.
  - (3) **Did the landlord accept rent from you to cover time beyond the time set forth in the notice to quit?** This may constitute a waiver of the 30 or 60 day notice.
  - (4) **Is the property subject to rent control?** If no, skip to d below; if yes:
    - (a) **Did the landlord provide a reason for terminating the tenancy on the 30 or 60 day notice to quit?**
- d. **Was the tenancy for a fixed term and was the term up?** If no, skip to e; if yes:
  - (1) **Did the landlord except rent for a time beyond the fixed term?** If so, this may have converted the fixed term to a periodic (month-to-month tenancy)
- e. **Is this an eviction following foreclosure?** If no, skip to f; if yes:
  - (1) **Were you the borrower on the mortgage?** If so, only a three day notice need be given. If not, the regular 30 or 60 day notice may be required.
- f. **Is the property where you are living under Section 8 or is it otherwise federally subsidized?** If so, the tenant should be referred to a local legal

services program immediately (although the SHLA Center can help the person to file an Answer due to the short time limits), because there are unique issues in Section 8 and federally subsidized housing, and the loss of a voucher can have grave repercussions for a tenant.

- g. **Do you believe the landlord is retaliating against you for making a complaint with the building inspector, or for any other reason?**
  - h. **Do you believe the landlord is discriminating against you because of your race, ethnicity, national origin, religion, gender, sexual orientation, familial status, age, or disability?** If a person is claiming discrimination in housing, he or she can be referred to the Department of Fair Employment and Housing to make a formal complaint. Filing a complaint with DFEH is a prerequisite to suing in court for discrimination.
  - i. **Were you employed by the landlord, and was the unit you occupy part of the terms of your employment or compensation?** A landlord who hires a resident manager and provides housing for the manager as full or partial compensation for the services the manager provides does not have to give notice to terminate the tenancy because there is no “tenancy.” The right to occupy the unit generally ceases when employment is terminated.
6. Have the tenant carefully review the booklet on “Legal Reasons Why I should not be Evicted” to see if there are any other defenses s/he wants to raise. **EMPHASIZE TO THE TENANT THAT THE COURT CAN LIMIT THE ISSUES TO BE PRESENTED AT TRIAL TO ONLY THOSE CONTAINED IN THE COMPLAINT AND ANSWER. THEREFORE, IF THE TENANT WANTS TO TALK TO THE JUDGE ABOUT A CERTAIN ISSUE, IT NEEDS TO BE IN THE ANSWER!**
7. Check the answer to make sure the tenant has stated facts supporting the affirmative defenses raised, has completed the necessary boxes and fields, and has signed and dated the answer.
8. Explain how someone other than a party must serve the papers, and how and where to file the originals. Refer people to the written instructions as much as possible.
9. Check to see if the tenant qualifies for a fee waiver, and if so, provide the forms and instructions.
10. Explain the next steps to the tenant, including the notice of trial. The court will send out a notice of trial after the plaintiff files a request to set or at-issue memorandum. The court **MUST** set the trial within 20 days from that date. Therefore, it is important to **EMPHASIZE TO THE TENANT THAT IF S/HE DOES NOT RECEIVE A NOTICE OF TRIAL DATE WITHIN 10 DAYS OF FILING THE ANSWER, TO CALL THE CIVIL UNIT OF THE COURT**, give the clerk the case number and ask if a trial date has been assigned.
11. **REFER ALL TENANTS WHO HAVE ARTICULATED A RECOGNIZEABLE LEGAL DEFENSE TO THE VOLUNTEER LAWYER SERVICES PROGRAM IF THEY MEET THE INCOME REQUIREMENTS (i.e. qualify for a fee waiver) AND TO**

THE LAWYER REFERRAL AND INFORMATION SERVICE IF THEY DON'T. The reason for this to try to get them a lawyer who can represent them in court for the trial, since it is quite difficult for unrepresented litigants to present their case when there is a lawyer on the other side making evidenciary objections, etc. We do have lots of trial preparation materials to assist self-represented litigants, and you can encourage them to read the materials, but if possible, they should try to get a lawyer to present their defense in court.