

**Superior Court, County of  
Nevada  
Public Law Center**

**EVICTIONS**

**(UNLAWFUL DETAINER)**

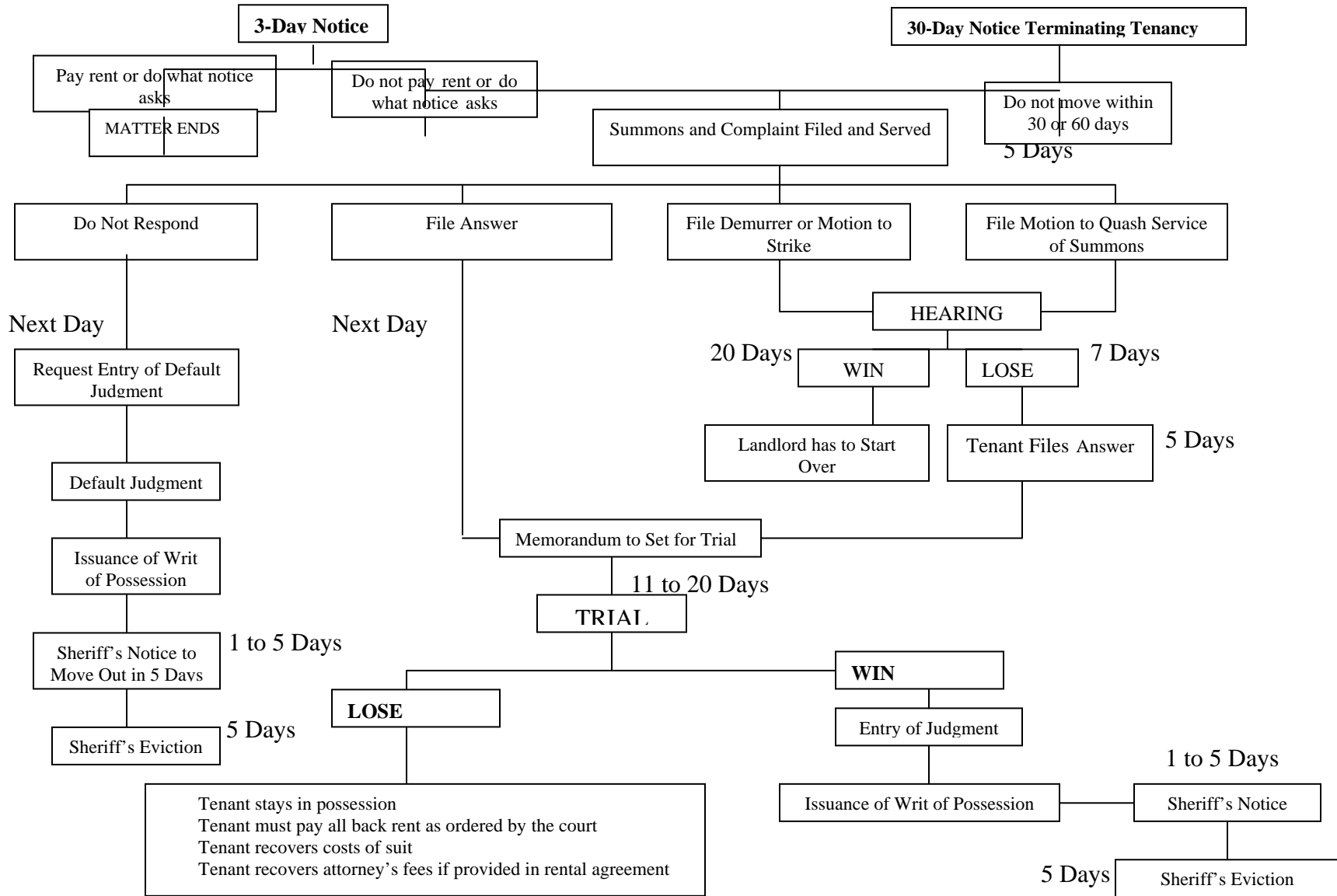
**1**

Tenant Information

**DON'T WORRY!**

This packet looks bigger than it really is. Half of it is forms. Please don't be afraid of all these words and papers. Many tenants do these papers by themselves and come out fine.

# UNLAWFUL DETAINER ACTION TIMELINES FOR TENANTS



A lawsuit to evict a tenant is called an “eviction” or “**unlawful detainer.**” The eviction process begins when the tenant is given a notice from the landlord to move out. If the tenant does not move out in time, the landlord can file a lawsuit. Eviction papers the landlord serves on the tenant are called the “**Summons**” and “**Complaint.**”

### The “Summons”

- names your landlord or manager as the “Plaintiff,” the person who is complaining;
- shows your case number;
- names the plaintiff’s lawyer, if there is one;
- sometimes names people as defendants, even if they don’t live there.
- **Everyone whose name is on the Summons as a defendant MUST file papers or they risk having a court judgment against them.**

- The Summons says that you have **5 calendar days** to file your papers. See “How to count the 5 days” below.
- “File your papers” just means “take your papers to the court and give them to the court clerk.”
- The Summons says that you must type your papers. Nevada County only requires that you print neatly in black or blue ink. Please don’t *handwrite*.
- Use the information on the Summons to fill out your papers. If there’s a lawyer, you send your papers to the lawyer, not directly to the Plaintiff/Landlord.

### The “Complaint”

- is the form for the landlord to tell his/her side of the story, including the reason for the eviction;
- asks the judge to order you to move out;

- may also ask the judge to order you to pay back rent;
- may ask for “Damages.” This just means “rent for the days after the eviction notice expired.” It does not mean that you are accused of causing any damage.

If you are sued, you have several choices:

1. You can defend yourself by **filing an “Answer”** to the lawsuit in the Superior Court Clerk’s office. The Answer is the only way for tenants to tell their side of the story, state their legal defenses, and get their day in court. Special forms are used, which are attached in this packet. To see if you have a legal defense, read the packet **Legal Reasons Why I Should Not Be Evicted**.

2. You can choose not to defend yourself and allow the landlord to get a **default** judgment against you. A **default** means that you failed to answer the complaint in the time required by law. If you allow a default to be entered against you, you CANNOT defend yourself in the case, and you may be forced to move from the property as early as 11 days from when you received the complaint. **WARNING:** a judgment against you could show on your credit report and make it harder for you to rent another place.

3. You can try to **reach an agreement** with the landlord. If you reach an agreement BE CAREFUL to make sure the landlord **dismisses** the lawsuit before the time is up for you to file your answer. Otherwise, a default may still be entered against you. You can check to make sure the case is **dismissed** by calling the court at (530) 265-1294. You will need to give the case number to the clerk.

**If you want to file an Answer to the lawsuit, all you have to do is:**

1. **Fill out 4 forms** (this booklet gives you the forms and tells you how to fill them out.)
2. **Make copies** (this booklet tells you how many).
3. **Send copies** to your landlord or landlord’s attorney, if he or she is represented.
4. **File the papers with the Court.**

**USE THE CHECKLIST PROVIDED TO MAKE SURE YOU DO EVERYTHING.**

## 1. Counting the Time to File Your Answer

You have **5** days to file your Answer in court after you receive a copy of the lawsuit filed against you. The 5 days includes Saturdays and Sundays. Do not count the day you were given the lawsuit, but begin counting with the next day. If the 5th day falls on a Saturday, Sunday, or holiday, you can file your Answer on the next business day.

<u>If you are served on:</u>	<u>Your last day to file the Answer is:</u>
Monday.....	the NEXT Monday, unless Monday is a Court holiday, in which case your last day to file is Tuesday.
Tuesday.....	Monday, unless it's a Court holiday.
Wednesday.....	Monday, unless it's a Court holiday.
Thursday.....	Tuesday, unless it's a Court holiday.
Friday.....	Wednesday, unless it's a Court holiday.
Saturday.....	Thursday, unless it's a Court holiday.
Sunday.....	Friday, unless it's a Court holiday.

**WHAT IF I MISSED THE 5-DAY FILING DEADLINE?** If you do not file an Answer by the 5<sup>th</sup> day, on the 6<sup>th</sup> day the landlord can file a Request to Enter Default and WIN THE WHOLE CASE BY “DEFAULT”, and you will not be allowed to present a defense to the case. **BUT**, you can still file your Answer, even after the 5<sup>th</sup> day **IF** your landlord has not yet filed a “Request to Enter Default.”

## 2. Where to get the Answer Forms

The Answer forms are included in this packet, but if you need additional forms, you can get them from the Superior Court Clerk's office or from the Public Law Center in the Nevada County Courthouse, located at 201 Church Street, Nevada City, CA, or you can fill them out on line at [www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp).

## 3. What Forms do I Need?

The 4 blank forms you need are at the end of this packet. They are:

- 1) **“Application for Waiver of Court Fees and Costs”**  
Each named Defendant must file his or her own.

2) **“Order on Application for Waiver of Court Fees and Costs”**

Each named Defendant must do his or her own Order.

3) **“Proof of Service by Mail”**

Only one Proof of Service by Mail form is needed if all defendants do one Answer together. (If anyone does their own “Answer,” they must do their own Proof of Service.)

4) **“Answer—Unlawful Detainer”**

All Defendants can do one Answer together. All defendants must sign it. OR, Defendants can do their own individual Answer and Proof of Service. If all Defendants have the same defenses, you should just do one Answer together to save time and effort. You may also want to file the checklist of defenses called “Attachment 3j” at the end of this booklet.

#### 4. What does it Cost to File an Answer?

You should check with the Court Clerk for the filing fee for each person named as a **defendant** to file an answer. If your income is below a certain level, you can apply for a **waiver** of the filing fee. You can get a **fee waiver application** packet from the court clerk’s office or from the Public Law Center. The fee waiver application is free.

#### 5. Where do I File my Papers?

You must file your papers at the Clerk of the Court’s office at the Courthouse. The address will be on the Summons, which you received. Each court keeps different hours. Nevada County Courts closes at 5:00 p.m. Call the court given on your Summons to verify the hours and plan to be there 15 minutes early.

#### 6. What Happens After I File?

The Court will send you notice of the date, time and place of trial. (That’s why it’s so important that you give your current mailing address on your Answer!)

**Superior Court, County of Nevada**  
**Public Law Center**

**EVICCTIONS**

**(UNLAWFUL DETAINER)**

**2**

**FORMS WITH INSTRUCTIONS**





# INSTRUCTIONS

## APPLICATION FOR WAIVER OF COURT FEES AND COSTS (Side 2)

Write in the case number  ↘

Write in the last name(s) of plaintiff(s) and Defendant(s) as written on the Summons. ➔

If you checked box 6 or 7 on side 1 of the Application: Check box 8 if it applies,  ➔ and, fill in item 9.  ➔

If you checked box 7 on Side 1 you **MUST** fill out items 8-12.

**WARNING:** Sometimes courts deny fee waivers based on the information you fill in here.

After the Judge reads this form, you could be asked to prove the expenses you listed.

<b>PLAINTIFF/PETITIONER:</b>	<b>CASE NUMBER:</b>
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### FINANCIAL INFORMATION

8.  My pay changes considerably from month to month. (If you check this box, each of the amounts reported in item should be your average for the past 12 months.)
9. MY MONTHLY INCOME
- a. My gross monthly pay is: \$ \_\_\_\_\_
- b. My payroll deductions are (specify purpose and amount):
- (1) \$ \_\_\_\_\_
- (2) \$ \_\_\_\_\_
- (3) \$ \_\_\_\_\_
- (4) \$ \_\_\_\_\_
- My TOTAL payroll deduction amount is: \$ \_\_\_\_\_
- c. My monthly take-home pay is \_\_\_\_\_
- (a. minus b.): \$ \_\_\_\_\_
- d. Other money I get each month is (specify source and amount, include spousal support, child support, parental support, support from outside the home, scholarships, retirement or pensions, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest or royalty, trust income, annuities, net business income, net rental income, annuities, net business income, net rental income, reimbursement of job-related expenses, and net gambling or lottery winnings.):
- (1) \$ \_\_\_\_\_
- (2) \$ \_\_\_\_\_
- (3) \$ \_\_\_\_\_
- (4) \$ \_\_\_\_\_
- The TOTAL amount of other money is \$ \_\_\_\_\_  
(If more space is needed, attach page labeled Attachment 9d).
- e. MY TOTAL MONTHLY INCOME IS (c. plus d.): \$ \_\_\_\_\_
- f. Number of persons living in my home: \_\_\_\_\_  
Below list all the persons living in your home, including your Spouse, who depend in whole or in part on you for support, or on whom you depend in whole or in part for support:
- | Name      | Age   | Relationship | Gross Monthly Income |
|-----------|-------|--------------|----------------------|
| (1) _____ | _____ | _____        | \$ _____             |
| (2) _____ | _____ | _____        | \$ _____             |
| (3) _____ | _____ | _____        | \$ _____             |
| (4) _____ | _____ | _____        | \$ _____             |
| (5) _____ | _____ | _____        | \$ _____             |
- The TOTAL amount of other money is: \$ \_\_\_\_\_  
(If more space is needed, attach page labeled Attachment 9f.)
- g. MY TOTAL GROSS MONTHLY HOUSEHOLD INCOME IS: (a. plus d. plus f.): \$ \_\_\_\_\_
10. I own or have an interest in the following property:
- a. Cash \$ \_\_\_\_\_
- b. Checking, savings and credit union accounts (list banks):
- (1) \$ \_\_\_\_\_
- (2) \$ \_\_\_\_\_
- (3) \$ \_\_\_\_\_
- (4) \$ \_\_\_\_\_
10. c. Cars, other vehicles, and boats, (list make, year, fair market value (FMV) and loan balance of each.):
- | Property  | FMV      | Loan Balance |
|-----------|----------|--------------|
| (1) _____ | \$ _____ | \$ _____     |
| (2) _____ | \$ _____ | \$ _____     |
| (3) _____ | \$ _____ | \$ _____     |
- d. Real estate (list address, estimated fair market value (FMV), and loan balance of each property):
- | Property  | FMV      | Loan Balance |
|-----------|----------|--------------|
| (1) _____ | \$ _____ | \$ _____     |
| (2) _____ | \$ _____ | \$ _____     |
| (3) _____ | \$ _____ | \$ _____     |
- e. Other personal property – jewelry, furs, stocks, bonds, etc. (list separately): \$ \_\_\_\_\_
11. My monthly expenses not already listed in item 9b above are the following:
- a. Rent or house payment & maintenance \$ \_\_\_\_\_
- b. Food and household supplies \$ \_\_\_\_\_
- c. Utilities and telephone \$ \_\_\_\_\_
- d. Clothing \$ \_\_\_\_\_
- e. Laundry and cleaning \$ \_\_\_\_\_
- f. Medical and dental payments \$ \_\_\_\_\_
- g. Insurance (life, health, accident, etc.) \$ \_\_\_\_\_
- h. School, child care \$ \_\_\_\_\_
- i. Child, spousal support \$ \_\_\_\_\_
- j. Transportation and auto expenses (insurance, gas, repair) \$ \_\_\_\_\_
- k. Installment payments (specify purpose and amount):
- (1) \$ \_\_\_\_\_
- (2) \$ \_\_\_\_\_
- (3) \$ \_\_\_\_\_
- The TOTAL amount of monthly installment payments is \$ \_\_\_\_\_
- l. Amounts deducted due to wage assignments and earnings withholding orders \$ \_\_\_\_\_
- m. Other expenses (specify):
- (1) \$ \_\_\_\_\_
- (2) \$ \_\_\_\_\_
- (3) \$ \_\_\_\_\_
- (4) \$ \_\_\_\_\_
- (5) \$ \_\_\_\_\_
- The TOTAL amount of other monthly expenses is \$ \_\_\_\_\_
- n. MY TOTAL MONTHLY EXPENSES ARE (add a. through m.): \$ \_\_\_\_\_
12. Other facts which support this application are (describe unusual medical needs, expenses for recent family emergencies, or other unusual circumstances or expenses to help the court understand your budget; if more space is needed, attach page labeled Attachment 12).

**WARNING: You must immediately tell the court if you**

**APPLICATION FOR WAIVER OF COURT FEES AND COSTS  
(In Forma Pauperis)**



# INSTRUCTIONS

## ANSWER (Side 1)

Write in your name, address, city, state,  
Zip code, and telephone number. ■■■■■→

Write in the name and address of the court,  
as written on the Summons. ■■■■■→

Write in the names of the Plaintiff(s) and  
Defendant(s), exactly as written on the  
Summons (even if spelled wrong). ■■■■■→

Write in the case number from the  
Summons. ■■■■■→

1. Write in the names of all defendants ■■■■■  
who are filing this Answer together. Spell the  
names correctly, even if they were misspelled  
on the Complaint.

2a. Check this box if the amount in the ■■■■■  
Complaint is less than \$1,000.  
Skip 2b.

2b. Check this box if the amount in the ■■■■■  
Complaint is more than \$1,000. Write in  
each paragraph number of the Complaint  
that you think are false.

2b(2). If you don't know whether a paragraph  
in the Complaint is true or false, write in the  
paragraph numbers in this section.

3. Check the applicable boxes. See Section 2a,  
"Legal Reasons Why I Should Not Be  
Evicted" for more information. ■■■■■

Continue on page 2. ↓

ATTORNEY OR PARTY WITHOUT ATTORNEY:	TELEPHONE NO.	<i>FOR COURT USE ONLY</i>
ATTORNEY FOR: (Name)		
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP: BRANCH NAME:		
PLAINTIFF/PETITIONER:		
DEFENDANT/RESPONDENT:		
■■■■■ <b>ANSWER -- UNLAWFUL DETAINER</b> ■■■■■→		CASE NUMBER:
1. Defendant (names) answers the complaint as follows:		
2. <b>Check ONLY ONE of the next two boxes:</b>		
a. <input type="checkbox"/> Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000).		
b. <input type="checkbox"/> Defendant admits that all of the statements of the complaint are true EXCEPT		
(1) Defendant claims the following statements of the complaint are false (use paragraph numbers from the complaint or explain):		
<input type="checkbox"/> Continued on Attachment 2b(1).		
(2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (use paragraph numbers from the complaint or explain):		
<input type="checkbox"/> Continued on Attachment 2b(2).		
3. <b>AFFIRMATIVE DEFENSES</b> (NOTE: For each box checked, you must state brief facts to support it in the space provided at the top of page two (item 3j).)		
a. <input type="checkbox"/> (nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.		
b. <input type="checkbox"/> (nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.		
c. <input type="checkbox"/> (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. <input type="checkbox"/> Plaintiff waived, changed, or canceled the notice to quit.		
e. <input type="checkbox"/> Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.		
f. <input type="checkbox"/> By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily by discriminating against the defendant in violation of the Constitution or laws of the United States or California.		
g. <input type="checkbox"/> 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 the facts showing violation of the ordinance in item 3j.)		
h. <input type="checkbox"/> Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.		
i. <input type="checkbox"/> Other affirmative defenses are stated in item 3j.		
(Continued on Reverse)		
<b>ANSWER – Unlawful Detainer</b>		



**Superior Court, County of  
Nevada  
Public Law Center**

**EVICTIONS**

**(UNLAWFUL DETAINER)**  
Instructions for Landlords

**2A**

Links to Court Forms

Application for Waiver of Court Fees and Costs:

<http://www.courtinfo.ca.gov/forms/documents/fw001.pdf>

Order on Application for Waiver of Court Fees and Costs (Fee Waiver):

<http://www.courtinfo.ca.gov/forms/documents/fw003.pdf>

ANSWER – Unlawful Detainer:

<http://www.courtinfo.ca.gov/forms/documents/ud105.pdf>

Proof of Service by First-Class Mail – Civil:

<http://www.courtinfo.ca.gov/forms/documents/pos030.pdf>

# CHECKLIST

- Read Section 1 “Introduction.”**
- Fill out your forms according to the directions given.**
  - *Fee Waiver*
  - *Order on Fee Waiver*
  - *Proof of Service*
  - *Answer*
  - *Attachment 3j*
- Look over your forms for accuracy and to be sure you didn’t miss anything. Did you fill in the caption? Case Number? Date and Sign?**
  - *Fee Waiver*
  - *Order on Fee Waiver*
  - *Proof of Service*
  - *Answer*
  - *Attachment 3j*
- Make copies of all originals, as follows:**
  - *Answer and Attachment 3j: 2 copies*
  - *Proof of Service: 2 copies*
  - *Application for Waiver of Court Fees and Costs: 1 copy*
  - *Order on Application for Fee Waiver: 2 copies*
- Mail one copy each of the following documents to the Plaintiff:**
  - *Answer*
  - *Attachments to Answer*
  - *Proof of Service by Mail*

***Do NOT mail the Fee Waiver forms. These are confidential.***
- File the original and 1 copy each of the following documents with the court clerk:**
  - *Answer with Attachments*
  - *Proof of Service by Mail*
  - *Fee Waiver*
  - *Order on Fee Waiver*
  - *One self-addressed, stamped envelope, so the Court can mail the Order on Fee Waiver back to you. Be sure to give the address where you are receiving mail. The clerk will stamp the originals and the copies, keep the originals and give the stamped copies back to you. Keep the copies for your records.*

## CAN I CHANGE MY ANSWER AFTER I FILE IT?

### ***Amended Answer:***

After you get your papers filed on time, you can take more time to get prepared. If you want, you can file an “amended answer” within five (5) days of the day you filed your Answer.

***To file an Amended Answer, continue on to the next page. ↓***

***To file an Amended Answer:***

- Get a new blank Answer form from the Clerk or Public Law Center.
- Write “Amended” before the printed word “Answer” in the caption.
- Complete your Amended Answer and Attachment 3j.
- Complete another Proof of Service by Mail form and mail a copy of it with a copy of the Amended Answer to Plaintiff or Plaintiff’s attorney.  
(You will not need additional Fee Waiver forms.)
- File your Amended Answer and Proof of Service by Mail forms (original and one copy each) with the Court Clerk.

**Superior Court, County of  
Nevada  
Public Law Center**

**EVICCTIONS**

**(UNLAWFUL DETAINER)**

**2B**

**LEGAL REASONS WHY  
I SHOULD NOT BE EVICTED**

## ***Common Legal Reasons For Not Evicting a Tenant (Also called “Affirmative Defenses”)***

Although many tenants believe they have a moral defense for not paying the rent, such as losing a job or a spouse, the law only recognizes certain kinds of defenses in eviction cases. **Affirmative defenses** are defenses that the law recognizes which raise facts not stated in the Complaint. Affirmative defenses must be stated in the Answer in order to be considered at trial. The person who states the defense has the burden of proving it at trial. The following are common defenses:

### **a. Breach of the warranty to provide habitable premises.**

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

If you want to research the law for this defense, you can find it in the Law Library at Code of Civil Procedure (CCP) section 1174.2 and Civil Code (CC) sections 1941-1942.5; *Green v. Superior Court* (1974) 10Cal.3d 616, 631-632, 111 Cal.Rptr.704.)

### **b. Deducting Needed Repairs from the Rent.**

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

If you want to research the law for this defense, you can find it in the Law Library at Civil Code (CC) section 1942.

c. **Landlord’s Refusal to Accept the Rent.**

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

d. **Landlord Waives or Cancels the Notice to Quit.**

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

If you want to research the law for this defense, you can read the case of *EDC Assoc. v. Gutierrez*, (1984) 153 Cal.App.3d 167, 170, 200 Cal.Rptr. 333.

e. **Retaliatory Eviction.**

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

If you want to research the law for this defense, you can find it in the Law Library at Civil Code (CC) section 1942.58 and the case of *Barela v. Superior Court*, (1981) 30 Cal.3d 244, 249, 178 Cal.Rptr. 618.

f. **Discrimination.**

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

mental disability, or because the tenant is receiving public assistance. Besides being a defense to an eviction, housing discrimination is against the law, and the landlord can be sued for damages in a separate case.

g. **Rent Control.**

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

h. **Acceptance of Rent After Expiration of Notice.**

This defense might apply if the landlord has accepted rent from you after the end of the 3- or 30-day notice given to you.

i. **Other Defenses.**

If you have any other defenses that are not listed on the answer form, you can check box “(i)” and state your defenses in section 3(j) at the top of page 2 of the form. Some other defenses, which might apply, are the following:

**1. Material Breach of Rental Agreement by Landlord.**

The landlord violated the rental agreement in a **material** way. This means that the landlord failed to do something important required by the rental agreement.

If you would like to research the law on this defense, you can find it in the Law Library in the case of *Green v. Superior Court*, (1974) 10 Cal.3d 616, 634-635, 111 Cal.Rptr. 704.

**2. Defective Notice.**

If the landlord gave you a defective notice of the eviction, either because it was not in writing, or was not given to you in the way the law requires, or because the 3-day notice did not state the exact amount of rent due, this defense may apply.

**3. Ownership of the Property is in Dispute.**

Due process guarantees, homeowners cannot be evicted without being permitted to raise affirmative defenses which if proved would maintain their

possession and ownership. In cases where ownership of the subject property is in dispute, lenders nor foreclosure sale buyers of the property in dispute may use certain existing procedural devices such as an unlawful detainer action to obtain possession of the premises until the separately filed action by the owner/tenant regarding their asserted ownership interest is

determined. In such cases a stay of the unlawful detainer proceedings until trial of the action to determine ownership rights should be granted.

Because of its summary character, an unlawful detainer action is not a suitable vehicle to try complicated ownership issues involving allegations of ownership. [\*Asuncion v. Superior Court\*, 108 Cal.App.3d 141, 146,](#)

For the law on this defense, read the case of *Mehr v. Superior Court* (1983) 139 Cal.App.3d 1044, 1049, 189 Cal.Rptr. 138.)

#### **4. Subdivision Map Act.**

If the landlord has violated the **Subdivision Map Act** by renting the property, this defense might apply.

For the law on this defense, look at Government Code Sections 66410-66499.57, and read the case of *Adler v. Elphick* (1986) 184 Cal.App.3d 642, 645-646, 229 Cal.Rptr. 554.

#### **5. Offset.**

If you previously overpaid the rent and are entitled to a refund, you may claim a defense called a **set-off** or **offset**, which means you can ask that you receive a credit on your rent for the amount of money the landlord is supposed to refund to you for earlier overpayment of rent.

For the law on this defense read the case of *Minelian v. Manzella* (1989) 215 Cal.App.3d 457, 463-465, 263 Cal.Rptr. 597.

#### **j. Facts Supporting Affirmative Defenses.**

This section is found at the top of page two of your answer form. Here you have to explain why you marked the affirmative defenses you chose, and give the facts

that support each of your defenses.

If you need more room, you can check the box at 3j(2) and add extra pages, OR you can include the entire facts on a separate page and mark box 3j(1). If you add pages, remember to mark under section 6 the number of pages you are adding.

### WARNING

THERE MAY BE OTHER AFFIRMATIVE DEFENSES, WHICH THE LAW RECOGNIZES, BUT WHICH ARE NOT LISTED HERE. AN ATTORNEY CAN BEST INFORM YOU WHICH AFFIRMATIVE DEFENSES ARE APPROPRIATE FOR YOU TO RAISE BASED ON THE FACTS OF YOUR CASE. YOU ARE STRONGLY URGED TO TALK WITH A PRIVATE ATTORNEY, IF POSSIBLE, TO EVALUATE THE FACTS OF YOUR CASE AND ADVISE YOU WHICH AFFIRMATIVE DEFENSES YOU SHOULD INCLUDE BEFORE FILING YOUR ANSWER.

Superior Court, County of  
Nevada  
**Public Law Center**

# **EVICTIONS**

## **(UNLAWFUL DETAINER)**

# 3

Serving the Answer and  
Completing the Proof of Service by Mail

## **SERVING THE ANSWER AND COMPLETING THE PROOF OF SERVICE BY MAIL**

After you have filed your answer with the court, you have to **serve** a copy on the other side. This means that a copy of the answer with the proof of service has to be given to the attorney for the landlord, or directly to the landlord, if he/she is not represented by an attorney. It can be **served** by mail or hand-delivered, but only by a person who is not a **plaintiff** or **defendant** in the case.

Enclosed is a **proof of service by mail**. This form is used to show the court that a copy of your answer was sent to the other side. The Proof must be signed by a person over 18 who is not a party to the case. This means that neither you, nor any other defendant in the case, can sign the proof of service.

### **Completing the Proof of Service By Mail**

To complete the Proof of service by mail first fill in the caption box at the top of the form just as you completed the caption on your answer form.

Follow the instructions on the back of the Proof of Service by First-Class Mail-Civil.

If the landlord's name and address are shown on the **summons** the answer must be mailed to the landlord. If the landlord's attorney's name and address are shown on the summons, the answer must be sent to the attorney.

**MAKE SURE A COPY OF THE ANSWER AND PROOF OF SERVICE BY MAIL IS MAILED, NOT THE ORIGINAL.** You need to file your **original Answer** and **original Proof of Service by Mail** at the Court Clerk's office. You should have extra copies with you when you file the originals so the clerk can stamp the copies and give them back to you. These are called **conformed** copies. You should always keep a **conformed** copy of each paper you file with the court.

Superior Court, County of  
Nevada  
**Public Law Center**

# **EVICTIONS**

**(UNLAWFUL DETAINER)**

## **4**

Preparing for Trial

## Preparing Your Case for Trial

1. Determining the Trial Date. Eviction cases are given priority on the Court Calendar. This means they are scheduled for trial much faster than other types of civil cases. The court will send you notice of the trial date at the address you put at the top of your answer. If you have not received notice of a trial date within two weeks after you file your answer you should call the court at (530) 265-1294. **BEFORE YOU MAKE THIS CALL;** look at the copy of the complaint or answer and be prepared to give the clerk your case number. The case number can be found in a box located midway on the right side of the form. You will need to give the case number, Plaintiff's name, Defendant's name and address of the property in questions to the clerk in order for the court to tell you whether a trial date has been set; as soon as you know the trial date, make it on your calendar immediately so you do not forget to appear in court.
2. Discovering What Evidence the Landlord Has Against You. Usually you know what the landlord is claiming because you can read it in the complaint, and you know how to prepare your defense to what you are accused to having done or not done. Sometimes you may not know the basis of the eviction case, and you need to find out before the trial so you can prepare your defense. Certain methods can be used to discover the other side's evidence. These methods are called discovery.
3. Getting Your Evidence Ready for Trial. Most eviction cases are conducted before a judge in a short period of time. Evidence the court usually considers includes documents, such as rental agreements, notices to quit, letters between the landlord and tenant, and photographs of the condition of the property. The court also considers testimony of the parties, and when appropriate, testimony of other witnesses. Testimony is what a person tells the court under oath about what happened in the case. You should make copies of the documents, and an outline of your testimony, you wish to present in court so you will be prepared to present your case. This will help you to focus on the issues in the case.

4. It is often helpful to watch other eviction cases in the same courtroom in which your case is scheduled, before the date of your case. You can learn about court procedure, where to stand how to speak to the court, and the time given each case. Ask the court clerk when the judge assigned to your case will be hearing other unlawful detainer (eviction) cases, so you can watch.
5. **BE ON TIME FOR YOUR TRIAL.** Come to court at least ten minutes before the time set for your case. If you are late and the judge calls your case when you are not there, you will lose without being able to give your side of the case.
6. **BE WELL PREPARED FOR TRIAL.** Bring all documents you need to prove your case. Have extra copies of each document you plan to give to the court, so you can give one copy to the other side first. Any defense you present to the court must have been stated in your answer. You have the burden of proof for each affirmative defense you put in your answer. This means that you must convince the court that the evidence in the case supports your defense more than it supports the landlord's side.

**THE PUBLIC LAW CENTER IS NOT REPRESENTING YOU. IT HAS ONLY ASSISTED YOU IN REPRESENTING YOURSELF BY PROVIDING LIMITED INFORMATION ABOUT APPEARING IN COURT. NO ATTORNEY FROM THE CENTER WILL APPEAR IN COURT TO REPRESENT YOU AT TRIAL OR ANY OTHER HEARING. YOU ARE REPRESENTING YOURSELF. THE CENTER STRONGLY RECOMMENDS THAT YOU SEEK THE SERVICES OF AN ATTORNEY IN THIS MATTER IF YOU CAN.**

Superior Court, County of  
Nevada

**Public Law Center**

**EVICCTIONS**

**(UNLAWFUL DETAINER)**

**5**

Introducing Evidence at Trial

## INTRODUCING EVIDENCE AT TRIAL

Before the court can consider the **evidence** you bring to the trial, such as photographs, reports, statements, etc., a proper **foundation** must be made to show that the evidence is reliable, that it is relevant, and that it is **admissible**. The California Evidence Code defines what constitutes admissible evidence. For every piece of evidence you want the court to consider in your case, you should know the corresponding rule for getting the evidence in. The following list shows some of the more common rules for the admission of evidence. Sample scripts for asking the court permission to introduce evidence, and for the evidence to be admitted into the court record are included.

### DEFINITIONS:

“**Evidence**” is defined as “testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.” (*Evidence Code Section 140*)

“**Hearsay Rule**”: “**Hearsay evidence**” is “evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” (*Evidence Code Section 1200*)

Hearsay evidence cannot be admitted in court unless it meets one of the exceptions to the Hearsay Rule set forth in the Evidence Code, beginning at section 1220.

There are three ways of getting evidence submitted to the Court:

1. STIPULATING THAT EVIDENCE MAY BE ADMITTED
2. REQUESTING JUDICIAL NOTICE OF CERTAIN EVIDENCE
3. LAYING A PROPER EVIDENCIARY FOUNDATION FOR THE ADMISSION OF EVIDENCE