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# THE EVICTION PROCESS



**BROUGHT TO YOU BY:**  
THE LAW OFFICE OF  
ANDREW H. GRIFFIN, III, APC

PAMELA MACIAS OF  
SAN DIEGO COUNTY EVICTIONS

**YOUR  
CASE  
GUIDE**

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**Andrew H. Griffin, III** is a licensed California Attorney. He is bilingual and fluent in Spanish and English. Since establishing the Law Offices of Andrew H. Griffin III, APC in 1983, he has assisted thousands of clients effectively navigate the legal process to protect and retain their real estate.

Before turning the firm's focus to helping individuals and business owners with Real Estate problems, Mr. Griffin earned his Juris Doctorate degree from Thomas Jefferson School of Law in San Diego, California, in 1982. He then went on to serve as an adjunct law professor at Thomas Jefferson Law School, teaching California Community Property. The Southern District of California Bankruptcy Court invited him to serve on committee to create Court's form Individual Chapter 11 Combined Plan of Reorganization and Disclosure Statement and Instruction Sheet. In addition, he was a recipient of the San Diego Voluntary Lawyer Program outstanding services award.

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# YOUR EVICTION GUIDE



## EVICITION OVERVIEW

THE MOST COMMON QUESTION WE RECEIVE

### HOW FAST CAN I GET THEM OUT?

The idea of purchasing rental income properties was great idea until the reality produces a tenant, who made all kinds of promises to get into the property, stops paying the rent, begins to mistreat the property, or becomes the neighborhood drug dispensary. As soon as this happens, the question that I hear most often is “how fast can I get them out?”. The answer to this question is the as most legal questions,

**“IT DEPENDS!”**

## The timetable for evicting tenants in California depends upon the following:

- 1** The type of Notice and the service of the Notice.
- 2** The filing and service of the Unlawful Detainer (UD) Complaint.
- 3** The filing of a response or failure to respond to the Unlawful Detainer Complaint.
- 4** Whether a trial is requested or if the tenant is defaulted.
- 5** Obtaining a Writ of Execution for Possession of the Premises and the Sheriff lockout.





## **WHAT IS AN EVICTION?**

Evictions in California are a Summary Proceedings. Summary Proceedings are not bound by the same time requirements as others. The process is faster to allow land- lords to obtain possession of the property and to reduce the loss of income. Even though it is a faster procedure, is also much stricter procedure to prevent the Tenant from unnecessarily losing his home. This means that a Landlord can lose its case for any error no matter how small.

**NOTICE FILE**



# YOUR EVICTION GUIDE

## CHAPTER 1 INITIAL EVICTION NOTICE

Every Landlord must provide proper notice before a case is filed in court. Proper notice depends upon many factors. These factors include the alleged breach of a covenant or duty of the tenant and/or the reason that the Landlord seeks to regain possession of the property



# YOUR EVICTION GUIDE



## TYPES OF EVICTION NOTICES

1. 3 Day Pay Rent or Quit
2. 3 Day Cure Covenant or Quit
3. 3 Day Quit for Improper Subletting, Nuisance, Waste
4. 30 Day Termination of Tenancy
5. 60 Day Termination of Tenancy
6. 90 Day Termination of Tenancy
7. Notice of Tenant's Right to Request Initial Inspection
8. Notice to Tenant to comply with the City of San Diego Ordinance

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# SECTION 1

## 3 DAY EVICTION NOTICES



### **3 Day Pay Rent or Quit**

A 3-Day Notice to Pay Rent or Quit is used when a tenant has not paid their rent on time.

### **3 Day Cure Covenant or Quit**

A 3-Day Cure Covenant or Quit is used when a tenant is breaking a contractual term in their rental agreement, such as bringing in a dog when there is a no pet policy, moving in additional occupants when there are only supposed to be a set amount of people living in the home according to the contract.

### **3 Day Quit for Nuisance**

A 3-Day Quit for Nuisance is used when a tenant has either begun to sublet the unit, has become a nuisance such as hoarding and the City Code Compliance has become involved, or illegal activity such as drug sales or causing City Attorney involvement.

## SECTION 2

# TERMINATION OF TENANCY NOTICES



### **30 Day Notice**

A 30-Day Notice is used when a tenant is not in a fixed term lease and they have lived in a property for LESS than 1 year.

### **60 Day Notice**

A 60-Day Notice is used when a tenant is not in a fixed term lease and they have lived in a property for MORE than 1 year.



## **90 Day Notice**

A 90-Day Notice is used when a tenant is not in a fixed term lease and the tenant is on Section 8 and not living in a government subsidized project/unit.

## **Section 8 Notification**

Prior to serving any Section 8 Tenant, a landlord must serve the tenant's designated housing assistant case worker with the eviction notice. The service upon the case worker does not have to be personally, but can be done so by either fax or email. It is important that the Section 8 case worker is notified prior to service upon the tenant.

## SECTION 3

# ADDITIONAL NOTICES & INFORMATION

### Notice of Vacating Tenant's Right to Request Initial Inspection

According to California Civil Code 1950.5, a tenant residing in a residential rental unit is to be provided notification of their right to have an initial inspection to remedy any repairs needed to recuperate as much of their security deposit back as possible. This notification is required to be provided prior to or at the time of being provided a termination of tenancy notice. This notice requires proper legal verbiage to maintain compliance with the governing law.







## City of San Diego Ordinance

The City of San Diego Ordinance is a Tenant Protection Ordinance under San Diego Municipal Code 98.0730 which affects tenants that have lived in a property for over 2 years. This ordinance requires just cause prior to evicting a tenant living within the City of San Diego limits. When serving the initial eviction notice on the tenant, the City of San Diego Ordinance along with the just cause needs to be cited within the notice, and a separate Notice, called a “Notice to Tenant” needs to be served with the initial notice to meet compliance under San Diego Municipal Code 98.0750

## Expiration of Notice

The time stated in a Notice, whether it’s a 3- Day, 30-Day, 60-Day or 90-Day notice, must completely run before the UD complaint can be filed with the Court. If a case is filed un- timely, the Landlord could lose the case and would have to begin again starting with pro- viding the proper notice.



# YOUR EVICTION GUIDE

## CHAPTER 2 THE COURT PROCESS



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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO

# YOUR EVICTION GUIDE

## COURT PROCESS STEPS

1. File Unlawful Detainer with the Court
2. Perform Service of Process
3. Submit Defaults if Defendants/Tenants do not file an answer
4. Request a trial date if Defendants/Tenants file an Answer
5. File Writ and/or Judgment for Possession



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# SECTION 1

## FILE UNLAWFUL DETAINER



Once the initial eviction notice has expired, then the landlord can file the Unlawful Detainer complaint with the court if the tenant has failed to vacate by the expiration date or failed to timely pay their rent if using a 3- Day Pay Rent or Quit. A general Unlawful Detainer court filing will include a Summons, Complaint, and Civil Case Cover Sheet. More specific type eviction cases may require additional type forms. Please consult an experienced Unlawful Detainer attorney prior to starting your case.

Pleading requirements initiating an Unlawful Detainer are strict and it is very important that the complaint must accurately and legally depict the allegations. The Landlord can lose a case if allegations are improperly pled. You should consult an experienced attorney or eviction service for assistance in properly completing your court forms.

## SECTION 2

# SERVICES OF PROCESS



There are three different methods in which the filed Unlawful Detainer can be served which are explained below:

### **Personal Service**

Personal Service is when the filed Unlawful detainer is handed directly to the named defendant.



## **Substitute Service**

Substitute Service is performed when 3 attempts have been made to personally serve the defendant without success, and on the third attempt, anyone over the age of 18 residing in the property can be given the documents.

## **Order to Post**

Order to Post is a method of service the court provides when at least 3 attempts have been made to serve the defendants without success. The order is submitted to the court which provides permission to serve the defendants by posting along with a certified mailing of the pleadings.

## **SECTION 3**

# **TENANT ANSWER TIME PERIOD**

### **Personal Service**

When the Unlawful detainer is personally served on the named defendant, the defendant will then have 5 calendar days to file an answer with the court.

### **Substitute Service**

When the Unlawful detainer is served by substitute service on the named defendant, the defendant will then have 15 calendar days to file an answer with the court.







### **Order to Post**

When the Unlawful detainer is served by an order to post on the named defendant, the defendant will then have 15 Calendar days to file an answer with the court.

### **All Unknown Occupants**

When the Unlawful detainer is served on the “All Unknown Occupants, any unnamed occupants within the property will have 10 days to file a prejudgment claim of right to possession with the court.

## SECTION 4

# DEFAULT OR REQUEST FOR TRIAL

### Request for Entry of Default

If the Tenant fails to answer within their allowed time based on the method of service, the Landlord can file a request to enter default. Once a default is entered by the court, the tenant is prevented from objecting to the Unlawful Detainer unless permission is received from the court, typically through an Ex-Parte Motion.

When a tenant doesn't file an answer, the case goes significantly faster as a court date is not needed to see a judge to discuss the facts of the case, and a writ and judgment for possession can immediately be filed in order to proceed with a sheriff lockout.





## **Request for Trial**

If an answer is filed, the landlord must request a trial date. The Court is required to schedule a trial date to be held within 20 days of the submitted form called a Request for Trial.

At the trial, the Landlord is required to prove entitlement to possession and/or damages in trial which will require the landlord to provide documentation to the judge showing the facts of the case are accurate and possession should be returned to the landlord.



# YOUR EVICTION GUIDE

## CHAPTER 3 PREPARING FOR TRIAL



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# YOUR EVICTION GUIDE

## TRIAL GUIDE

1. Preparation & Expectations for Trial
2. Stipulated Agreement
3. After Trial
4. Filing of Final Documents in preparation of Sheriff Lockout



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# SECTION 1

## PREPARATIONS & EXPECTATIONS FOR TRIAL

### **What to Expect at Trial**

The trial is either set for a morning time of 8:30 am or an afternoon time of 1:30 pm and wait time could last for a few hours so it is important to plan accordingly.

An unexperienced landlord who has never been through an Unlawful Detainer Trial may find the procedure very intimidating. Many landlords believe that the hearing will be very similar to a small claims hearing. This is not the case at all. The hearings for Unlawful Detainers are very procedural according to Unlawful Detainer Civil Law. It can be easy for an unexperienced person who goes to court on their own to become frustrated when they are presented with unfamiliar laws or terms by either the judge or the opposing attorney. An inexperienced landlord will often get flustered and answer inappropriately which can cause them lose their case when they would normally prevail.

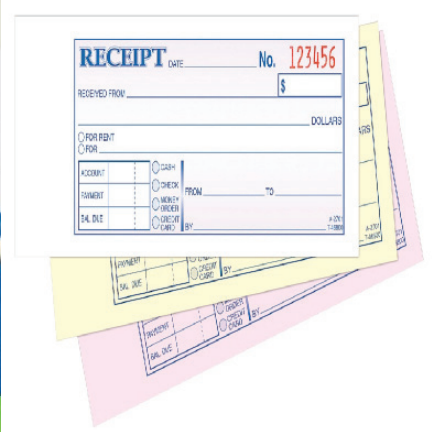
It is always recommended that a landlord or tenant appear in court with an experienced Unlawful Detainer attorney to ensure the court trial goes smoothly and possession of the property is properly decided.

## **HOW TO PREPARE FOR TRIAL**

It is important that the landlord bring all documentation pertaining to the tenant's tenancy to the trial. Important types of documentation include rent rolls, rent receipts, repair receipts, pictures, email or text message conversations, etc. When the tenant is claiming they have already paid their rent or that the property has habitability issues, then these types of documentations will help to prove the landlord's case.

If the landlord is being represented by an attorney, it is also important that the landlord meet with their attorney prior to the trial date so the attorney can prepare the landlord as to the procedural questions and the possible.





## SECTION 2

# STIPULATED AGREEMENT



At the start of every trial, the judge asks everyone to meet and confer to discuss a resolution out in the form of a Stipulated Agreement. The majority of cases get resolved through a stipulated agreement. A stipulated agreement is an agreement between the landlord and tenant of specific terms which are reviewed by the judge and made into a court order in which both parties are required to comply. A typical Stipulated Agreement will contain a specific date in which the tenants will either “pay and stay” or move out



along with a payment plan in exchange for the case either getting dismissed or the masking of the eviction case being continued.

### **What is Masking?**

The Legislature passed a law in 2003, which states that for the first 60 days after an eviction case was filed, the law directs the clerk to “mask” the court records. After 60 days, the mask was to be lifted, unless the defendant (the tenant) prevailed within those 60 days.

The law was later changed on January 1, 2017, so that if the landlord obtains a judgment more than 60 days after the filing of the complaint, the records will be unmasked only upon order of the court.

The law provides for specified exceptions to these rules. Court records of the case will be made available to:

- the parties to the case and their lawyers;
- a person (such as a journalist) who provides the court clerk with the names of at least one plaintiff and one defendant, and the address of the premises;
- a resident of the premises who gives the clerk the name of one of the parties or the case number, and who shows proof of residency, and
- a person who has an order from a court, issued upon a showing of good cause.

These exceptions are designed to allow interested parties, including the press and other residents of the rental property (neighbors), to have access to the court records.

“Masking” gives the incentive for agreement because there is no “masking” once a Landlord prevails at trial. The parties often agree to “extend” the masking period until a specific date which is agreed for turnover of possession of the property. This agreement benefits both parties because the Landlord will get the possession of the property and tenant will have the incentive to preform because a prospective landlord will not be able to view the masked records which diminishes the ability to rent places in the future.

It also should be kept in mind that due to the back up in the Courts and with the Sheriff that it normally takes 3-4 weeks to have the Sheriff perform the lockout from the date of the Judgment. These facts should be taken into consideration in the settlement negotiations.

Most landlords feel that they are giving into the tenant and “folding”, but a stipulated agreement is quite beneficial. Typically, the agreed move out date is sooner than the sheriff would be able to even complete the lockout. Also, the writ could still be issued immediately after the trial, and the sheriff lockout could still be scheduled just in case the tenant does not move out by the promised date. In addition, if the tenant fails to comply with the terms of the agreement, then a judgment could be issued, and the eviction could still be placed on the tenant’s record.



## SECTION 3 AFTER TRIAL

Whether a move-out date is agreed upon in a Stipulated Agreement or if the judgment is rendered in favor of the landlord, a Writ for Possession of the Premises is filed with the court. Typically a Judgment is only filed after a trial if a Stipulated Agreement was not obtained in court. Therefore, if the judge rules in favor of the landlord the landlord would have to draft and submit a judgement for the judges signature. If the tenant fails to appear at trial, the landlord would still have to provide sufficient evidence to obtain a judgment. A judgment is not automatically rendered in favor of landlord if the tenant fails to appear.



## **SECTION 4**

# **FINAL DOCUMENTS TO FILE**

### **Writ for Possession**

A Writ for Possession of the Premises is the document in which the Civil Sheriff Department needs in order to execute the removal of any tenant/occupant from a property. This document is filed either after a court hearing or when all named tenants and All Unknown Occupants have been defaulted. Once the Writ has been received back filed from the court it can be submitted to the Civil Sheriff Department along with the appropriate Sheriff forms to initiate the lockout process.

### **Judgment for Possession**

A Judgment for Possession of the Premises is filed once the judge has rendered judgment on behalf of the landlord. Typically, a judgment is not filed if a Stipulated Agreement has been agreed upon. However, this is dependent upon the agreed terms within the Stipulated Agreement. In the circumstance in which the tenants have been defaulted, a Judgment for Possession of the Premises is submitted for filing with the court along with the Writ for Possession of the Premises.





# YOUR EVICTION GUIDE

## CHAPTER 4 SHERIFF LOCKOUT PROCEDURE



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## ARE WE ALMOST THERE YET? HOW MUCH LONGER?

The answer is “YES”, you are finally as the final step to remove the tenant from your property. The time period in which the tenant will finally be removed once the Writ and Sheriff Instructions have been delivered to the Civil Sheriff Department depends upon the Sheriff’s calendar and backlog. The Sheriff lockout typically takes place within about 2-3 weeks, but could be longer if the property is in a rural area as the Sheriff only goes to rural area on specific days of the week or specific days of the month. Please see the flow chart below to see the general steps of the sheriff lockout process.



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# SECTION 1

# SHERIFF LOCKOUT STEPS



## Step No. 1

The Landlord will first deliver the appropriate Sheriff Lockout Instruction forms, the court approved Writ of Possession of the premises, and the Sheriff lockout fee to the Court's Civil Sheriff Department. The Sheriff will then process the order for scheduling of the lockout.

## Step No. 2

Once the order has been successfully processed by the Civil Sheriff Department, the Sheriff will then go out to the property to post a tentative 5-Day Notice for the tenants to vacate the premises. Typically the day after the date listed on the 5-Day Notice is when the landlord meets the Sheriff at the property to change the locks. However, when the Sheriff is significantly backlogged, the date in which the landlord may meet the sheriff may occur a



few days after the date indicated on the original notice issued by the Sheriff. This also occurs if the property is in a rural area as the day of the lockout would not take place until the next designated day in which the Sheriff services that area.

When the Sheriff posts the 5-Day Notice for the tenants, the Sheriff's Department will also mail the landlord a notification letter of the exact or tentative lockout date of the lockout. The notification letter to the landlord will not indicate a time to meet the sheriff at the property. The Sheriff will call the landlord the day before the lockout to provide the time to meet at the property.

### **Step No. 3**

It is important to arrive at the property at least 30 minutes prior to the time of the lockout appointment. Also, keep in mind that the Sheriff does not change the locks for the landlord. The landlord will need to have either a locksmith at the appointment or if the landlord wishes to change the locks themselves, then the appropriate tools and supplies should be brought to the appointment.

# YOUR EVICTION GUIDE

## CHAPTER 5 QUESTIONS AND ANSWERS



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## **SECTION 1**

# **MOST COMMON Q&A**

### **What if I don't know the names of everyone living in the property?**

Often times landlords will ask this question if their tenant has moved other people into their property and the names of the new people were never provided to the landlord. The solution to this problem is to make sure “All Unknown Occupants” is added to the eviction by serving and defaulting All Unknown Occupants. This will ensure that when the sheriff goes to the property to do the lockout, they will remove everyone from the property.

### **What happens if I do not include “All Unknown Occupants” in the eviction?**

If “All Unknown Occupants” is not added to the eviction, then the sheriff will only remove the named defendants and leave everyone else when they effect the lockout.



## **What is masking?**

By law, the court is required to “mask” unlawful detainer cases for the first 60 days. After 60 days, the case information will be available to the public to view.

## **What is an Ex-Parte Motion?**

An Ex-Parte Motion is known as an emergency hearing and is often used in an Unlawful Detainer case when the tenant has received the sheriff lockout order and instructions and the tenant is seeking to “stay” the lockout so they can get additional time to move out of the rental unit.

## **How are Notice and Answer days counted**

Whether it is the service of the initial eviction notice, or service of the filed Unlawful Detainer, the first day to count is the following day after service. If the final day of that period falls on a weekend or a holiday, then the final day would jump to the next business day.

## **Am I able to accept rent during the eviction case?**

If you are evicting a tenant in a residential property, then you would absolutely not want to accept rent from the tenant. Doing so would make your case defective and the judge could throw your case out at trial. If the eviction is regarding a commercial property, then you would want to consult your attorney before accepting rent as the courts handle commercial properties differently.

## **What happens if my tenant tries to give me partial rent during the 3 day time period of the 3 Day Notice to Pay Rent or Quit?**

If your tenant tried to pay you less than the demand during the 3 day time period after serving the 3 Day Notice to pay rent or quit, you have the right to deny the rent so long as it is less than the demand. If you do choose to accept the partial amount, then the 3 Day Notice will then be void. A new 3 Day Notice to Pay Rent or Quit would have to be served to demand the balance of the rent still due.

## **What happens if my tenant files Bankruptcy during the eviction case?**

When a tenant files a Bankruptcy during an eviction case, this places an automatic stay on the property and the eviction case is halted. In order to continue with the eviction, the landlord will need to have an experienced bankruptcy attorney, such as Andrew H. Griffin, III, to go into court with them to present the appropriate paperwork to the Bankruptcy court in order to obtain a release from the “ automatic stay” to give the Superior Court authority to proceed with the eviction action.



## **What is the advantage of starting an eviction with a general termination of tenancy notice as opposed to any other type of eviction notice?**

A general termination of tenancy notice such as a 30 day or 60 day notice, the landlord does not have to provide a reason to regain their property, nor will the judge address any of the tenant's defenses except the defense of retaliation to try to defeat the case. However, if the tenant is within the City of San Diego limits and has lived in the property for over 2 years, then a reason for eviction may be needed. In situations apart from this exemption, the usefulness of a general termination of tenancy apply where the property is not permitted or the property has major habitability issues as addressed below in the next 2 questions. With any other type of notice such as any of the 3 Day Notices, the judge will listen to habitability, harassment, or issues regarding the structure not being permitted, which would then put the case at risk of possibly being dismissed by the judge.

## **What happens if the unit my tenant rents is not permitted?**

Unfortunately, in the eyes of the court, a unit that is not permitted is one in which a landlord cannot rent nor can a landlord demand rent for. In situations such as these, we highly recommend the eviction is initiated with a general termination of tenancy notice as opposed to a 3 Day Pay Rent or Quit if the tenant is past due in rent.

## **What are habitability issues and how could they affect my case?**

Habitability issues are considered to be major defects in the property where the court considers the property to not be completely livable. Some habitability issues include, but are not limited to, lack of heating, lack of working plumbing, lack of proper flooring, leaking roof, mold, rodent and insect infestations, lack of proper insulation, etc. It is important to address these issues up front with your attorney or eviction service as these matters can dramatically affect your case. For example, if a landlord demands rent for a unit that is not completely habitable, the judge may order the landlord to fix the issues with the property while only being able to collect a reduced rent or the judge may dismiss the landlord's case altogether. As mentioned in the previous question, in most cases where there are major habitability issues that cannot be immediately fixed with the tenant's cooperation, then it is recommended to start the eviction with a general termination of tenancy notice.

## **What do I do with the things my tenant left behind after the sheriff lockout?**

At the time you meet the sheriff at your rental property to do the lockout, the sheriff will issue you a no trespassing order to post in the window of your property along with instructions as to the handling of your tenant's possessions. You are required to hold onto the possessions for a minimum of 15 days to allow the tenant to set up an appointment to collect the rest of their belongings. You are able to collect a reasonable storage fee for the days in which the possessions were stored from the time of the sheriff lockout.

## **What are the expected court and sheriff fees during the eviction case?**

As of December 2018, in San Diego County California, the typical court and sheriff fees are as follows:

Initial Superior Court Filing fee to open case: \$240.00 where the requested rental damages are less than \$10,000.00.

Order to Post filing fee to Superior Court \*(Only if tenant is difficult to serve): \$20.00 + Certified Mailing Fee

Writ Filing Fee to Superior Court: \$25.00

Sheriff Lockout Fee: \$145.00

Other filing fees may apply if Ex-Parte hearings are required or other filings where the court requires a filing fee. The court fees addressed above are the fees most commonly paid to complete an eviction action.

