

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA
WHAT I SHOULD KNOW ABOUT UNLAWFUL DETAINERS

What is an Unlawful Detainer lawsuit?

An unlawful detainer lawsuit is a suit brought by a landlord to obtain possession of rented property and receive payment of back rent. In order to legally evict a tenant, the landlord must file an unlawful detainer lawsuit. The filing fee is **\$240** if the demand amount does not exceed \$10,000. If the demand is between \$10,000 and \$25,000 the filing fee is **\$385**. If the demand is over \$25,000 the filing fee is **\$435**.

Are Unlawful Detainer actions public record?

Access to the court file, index, register of actions, or other records is not permitted until 60 days after the complaint is filed, except pursuant to an ex-parte order upon a showing of good cause. Access is allowed to a party or an attorney in the action. See CCP 1161.2 for other exceptions. If a defendant prevails in the action within 60 days after the complaint is filed, the court clerk may not allow access at any time to any of the records specified in the above paragraph.

How do I respond to an Unlawful Detainer lawsuit?

If you are served with an unlawful detainer complaint, the complaint will show the court location where you should file your response. You have ten days to respond in writing to the landlord's complaint. Your response must be served by someone over the age of 18 and not a party to the action. After you have filed your written answer to the landlord's complaint in the clerk's office and a *Request/Counter-Request to Set Case for Trial-Unlawful Detainer* is filed by the plaintiff, you will both be notified by the Court of the time and place of trial. When you file your written response, the filing fee is **\$225** if the demand amount is less than \$10,000. If the demand is between \$10,000 and \$25,000 the filing fee is **\$370**. If the demand is over \$25,000 the filing fee is **\$435**. However, it is possible to obtain a waiver of the fee if you cannot afford to pay. A fee waiver form *Request to Waive Court Fees* can be obtained from the clerk's office.

What is a Writ of Possession/Notice to Vacate?

If the case goes to trial and the landlord wins the unlawful detainer lawsuit, the court will issue a judgment of possession. To enforce the judgment, the landlord will then obtain a Writ of Possession that directs the Sheriff to enforce the judgment for possession of the property. This legal document authorizes the Sheriff to physically remove and lock the tenant out of the property. The Sheriff's costs from the eviction will then be added to the judgment, which the landlord can collect from you. The Sheriff will serve you with a Notice to Vacate the property before enforcing the Writ of Possession. After you receive the notice, you have five days to move. If you fail to move within five days, the Sheriff will turn over possession of the property to the landlord.

What happens if I fail to respond to the Unlawful Detainer lawsuit?

The Court may enter a default judgment in favor of the landlord and issue a **Writ of Possession** if you fail to respond after the tenth day. This default judgment allows the landlord to obtain possession of the property through a **Notice to Vacate**.

Do I have the right to a jury trial?

Both parties have the right to a jury trial. To request a court trial or a jury trial, the requesting party must file the Judicial Council form UD-150, *Request/Counter-Request to Set Case for Trial-Unlawful Detainer*. The Court will notice all parties of the trial date. If a jury trial is requested, the requesting party must also pay a nonrefundable fee of \$150 at the clerk's office at least **5 days prior to the scheduled trial date**. The party demanding a jury trial is additionally responsible for the daily cost of the fees and mileage of the jury.

What if I have to change my trial date?

To change your trial date you need to either file a **Motion for Continuance, along with a \$60 fee** or a written stipulation (agreement by both parties) as soon as the need for a continuance is known.

What should I do to prepare for my court trial?

If you are not represented by an attorney, you can represent yourself. If you are representing yourself in a Superior Court action you can contact a legal aid society for advice. The telephone numbers are listed below:

Lompoc	(805) 736-6582	Santa Barbara	(805) 963-6754
Santa Maria	(805) 922-9909	Solvang	(805) 736-6582

- Bring any letters, documents, photographs, inspection reports, or any other exhibits with you to trial.
- Have at least two copies of all documents, an original for the court and a copy for the opposing party.
- Witnesses that are necessary for your defense should be subpoenaed for appearance in court. Subpoenas must be served and filed with the court on or before your trial date. You cannot serve the subpoena, and the person(s) served must be given reasonable notice of the date and time of the trial. The cost to request each witness is \$35, plus \$.20 per mile for mileage to and from the trial location.

Will the Court provide interpreters for Unlawful detainer cases?

The Court will try to provide an interpreter in every Unlawful Detainer case, when timely requested. An interpreter may be requested using form INT-300, *Request for Interpreter (Civil)*, **which must be filed with the clerk's office at least 48 hours before the scheduled hearing/trial**. Once received, the clerk's office will notice the Interpreter Coordinator, who, if possible, will obtain the services of a qualified interpreter for the date/time specified in the request. To request an ASL interpreter, you must file the Judicial Council form MC-410, *Disability Accommodation Request*.

What will happen if I lose the case? May I appeal the judgment?

If the landlord obtains judgment against you, you will have to move. The judgment may include the landlord's court costs and attorney fees plus any proven damages. You may appeal the judgment; however, an appeal does not automatically stay proceedings upon the judgment. To stay the execution of the judgment during the appeal process you must file a **Petition for Stay of Judgment Pending Appeal**. (CCP 1176)

Petition for Stay of Judgment – A petition for stay of Judgment pending appeal must first be directed to the judicial officer who heard your case. Petitions are not granted unless it can be shown that you will suffer **extreme hardship** in the absence of a stay, and that the stay will not cause a hardship to the landlord. If the judicial officer grants the petition, you will have to pay the "reasonable monthly rental value" to the court monthly in advance, as rent becomes due. The Court also has the discretion to impose other conditions on the granting of the stay. After forfeiture of an unexpired rental agreement term, the Court also has the discretion to restore a tenant to his/her former tenancy, before the landlord retakes the premises. You may petition the Court to be restored to your tenancy by filing a verified **Application and Petition for Relief Against Forfeiture**. (CCP 1179)

If the petition is granted, you will be required to make full payment of all rent due and to fully perform any other conditions of the lease, if applicable. The Court may also require you to pay the landlord's attorney fees and costs.

What if I do not appear for the trial?

If you fail to appear for the trial, the Court may enter judgment in favor of the landlord. The landlord will obtain a **Writ of Possession** that will legally authorize the Sheriff to evict you from the property.

Local Court forms:

<https://www.sbcourts.org/ff/form-packets.shtm>

Judicial Council "fill-in and print" forms:

<https://www.courts.ca.gov/forms.html>

Other helpful Websites: (Partial List)

<https://www.courts.ca.gov/selfhelp-housing.html>

www.sucorte.ca.gov (Spanish website)

www.dca.ca.gov/r_r/lanldtoc.html

<https://www.courts.ca.gov/documents/California-Tenants-Guide.pdf>