



RESPONDING TO A COMMERCIAL EVICTION: UNLAWFUL DETAINER GUIDE FOR SMALL BUSINESSES

Representing Yourself and Your Business in Commercial Eviction Proceedings

Is your landlord trying to evict you and your business from your commercial space?

This document provides guidance to sole proprietors of businesses for responding to an eviction (unlawful detainer) lawsuit. You might also seek help drafting your answer from the [Alameda County Self Help center](http://www.alameda.courts.ca.gov/Pages.aspx/Self-Help-Center-and-Family-Law-Facilitator-s-Office-Hours-and-Locations) (<http://www.alameda.courts.ca.gov/Pages.aspx/Self-Help-Center-and-Family-Law-Facilitator-s-Office-Hours-and-Locations>)

You may be required to obtain a lawyer:

If your business is an LLC or any type of Corporation, and your business was named on the complaint, you need a legal representative to file these documents and cannot do it yourself. If you are in need of a legal representative after being served with an unlawful detainer complaint, please apply for our services [here](https://lccrsf.org/get-assistance/legal-services-for-entrepreneurs/) (<https://lccrsf.org/get-assistance/legal-services-for-entrepreneurs/>), and we will try to match you with an attorney or refer to other organizations who might be able to help.

This guide aims to ensure small business owners can preserve their rights to defend themselves in court by filing a timely response to an eviction lawsuit.

As soon as a commercial tenant receives an unlawful detainer complaint from the court, the first step in protecting their rights and their business is to:

FILE AN ANSWER WITHIN 5 COURT DAYS OF RECEIVING A COMPLAINT.*

This guide includes:

- Overview of the Commercial Eviction Process
- Description of Notices and Court Forms
- **INSTRUCTIONS FOR FILING AN ANSWER (5 COURT DAY DEADLINE TO ANSWER, WITH EXCEPTIONS EXPLAINED)**
- Various Defenses for Commercial Tenants to use to Dismiss Eviction Cases and Safeguard a Business
- Negotiation Advice
- Model Answer Sample

Review the instructions in this guide, carefully complete all required court forms, and use the outlined defenses and negotiation strategies as appropriate.

This guide is provided for informational purposes only; it does not constitute legal advice. If the Answer deadline has passed, the court has already issued an eviction judgment, or the tenant requires more personalized legal help, please apply for [our services](https://lccrsf.org/get-assistance/legal-services-for-entrepreneurs/) (<https://lccrsf.org/get-assistance/legal-services-for-entrepreneurs/>) or look for a sliding scale attorney through the [Alameda County Bar Association Lawyer Referral Service](https://www.acbanet.org/need-a-lawyer/) (<https://www.acbanet.org/need-a-lawyer/>).

This guide was adapted from materials created by our community partner, Bay Area Legal Aid; it has been modified with their permission. Lawyers' Committee for Civil Rights is very grateful to Bay Area Legal Aid and the East Bay Community Law Center for their support and generosity in collaborating on this resource.

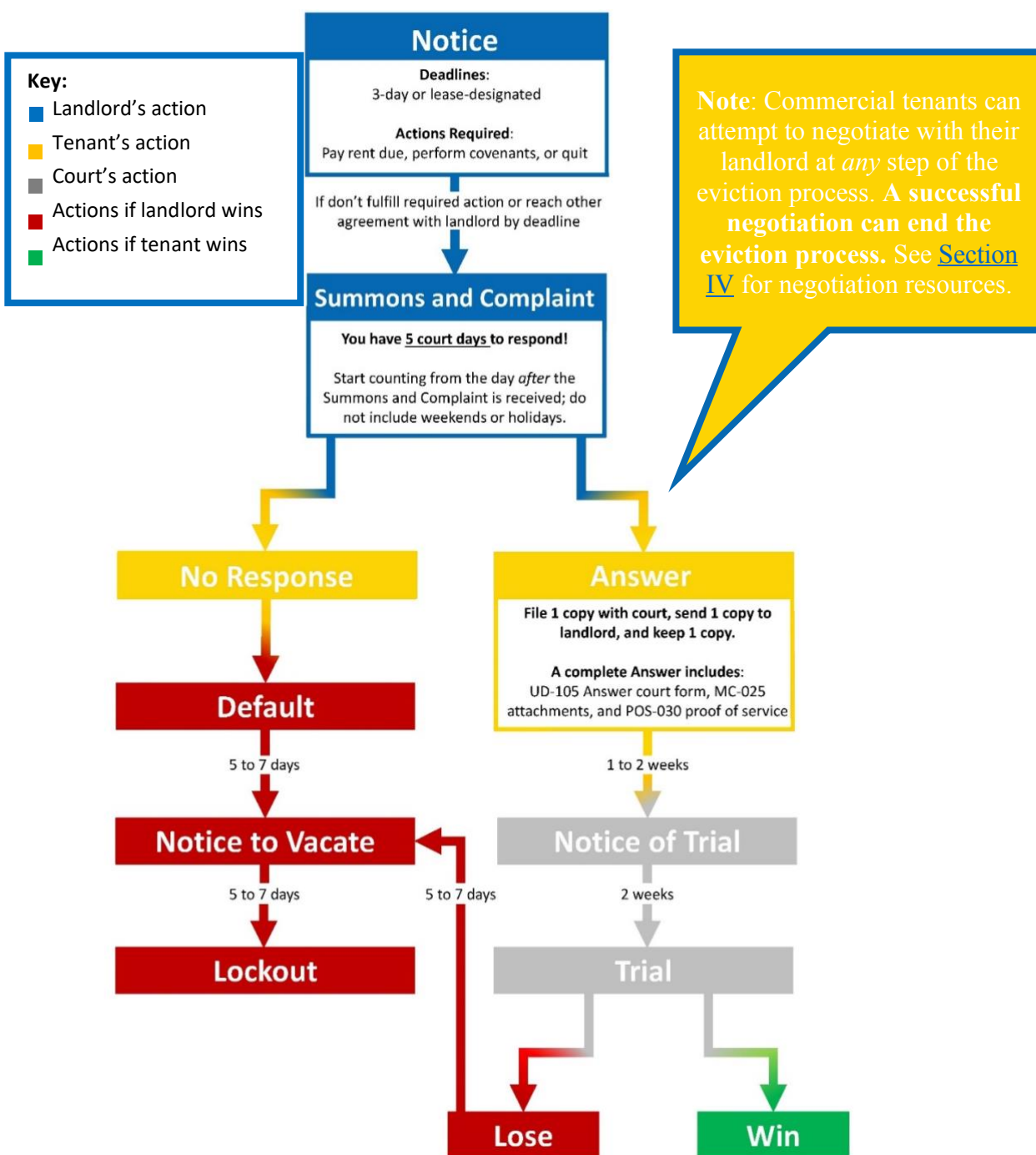
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I. Overview of the Unlawful Detainer Timeline

Unlawful Detainer

“Unlawful detainer” is the legal term for an eviction lawsuit; landlords file unlawful detainer lawsuits in court to evict tenants and obtain possession of their properties. There are strict rules landlords must follow to legally evict tenants (which are outlined in this guide). This guide will use “unlawful detainer” and “eviction” interchangeably: both words mean the same thing. Below, on the next page, is a simplified timeline of the eviction process.



II. Types of Notices and Actions Required

NOTICE

A “Notice” is a written document from the landlord to the tenant. Notices are the first document received in the eviction process. There are different kinds of notices—they vary by deadline and action required from the tenant. For commercial tenants, notice types and deadlines include:

- 3-day Notice to Pay or Quit (Quit means to move-out);
- 3-day Notice to Perform Covenants (take specific actions, usually specified in the lease agreement) or Quit;
- 3-day Notice to Quit;
- 30- or 60-day Notice to Quit (for no cause – not due to any violation of the lease); or
- Lease-designated notices. The deadline for a lease-designated notice is set by the terms of the commercial lease between the landlord and tenant. Such a deadline governs over statutory deadlines.

IMPORTANT: Read any notice you receive *immediately* to understand how to respond and seek legal assistance if necessary.

Deadlines

For commercial tenants, notice types and deadlines include:

- 3-day Notice to Pay or Quit;
- 3-day Notice to Perform or Quit;
- 3-day Notice to Quit;
- 30- or 60-day Notice to Quit (for no cause); or
- Lease-designated notices. The deadline for a lease-designated notice is set by the terms of the commercial lease between the landlord and tenant. Such a deadline governs over statutory deadlines.

Actions Required

Actions required from the tenant *by the notice deadline* can include:

- Pay rent due or quit (move out);
- Perform covenants (specific actions, usually specified in the lease agreement and notice) or quit; or
- Quit (move out). A notice that does not provide any other option than to quit must be based on nuisance, illegal conduct, or threats to public health and safety caused by tenant. A tenant who has continued to rent a property after their lease has expired may also receive a 30- or 60-day Notice to Quit, which can be issued for any reason

How To Figure Out Your Deadline:

Each Notice starts with a number of days, like 3-day or 30-day. The number of days is the deadline. You start counting the days after you get the Notice.

- For the Notices that ask you to pay or fix a problem or move out, you do **not** count weekends or [court holidays](#) in the deadline.
- For Notices to only move out by a deadline, you count each calendar day. But, if the last day is a Saturday, Sunday, or a [court holiday](#), then the deadline is the next business day.
- If the Notice is delivered by substitute service or posting and mailing service (i.e. Notice posted on door and mailed to tenant’s business address), the Notice is served the day it is mailed. The deadline to perform the Notice actions should be counted from the day after the Notice was mailed. (see page 6 for method of service details).

Check if the Notice Follows the law:

- The Notice must be delivered the right way
- The Notice has all the required information

California courts do not provide a court form for initial notices. Below is an *example* of what an eviction notice might look like. Since there is no standardized court form, eviction notices may vary in appearance. Regardless of the form used, eviction notices must be in writing (unless the lease between the landlord and tenant specifies a different format) and must meet certain requirements to be valid.

If the landlord doesn't follow these rules, the court may decide the eviction is invalid. (Further explained in [Defenses Based on Notice Requirements](#)).

3 DAY NOTICE TO PAY RENT OR QUIT

_____, California _____

TO TENANT(S) AND ALL OTHERS IN POSSESSION OF THE PREMISES LOCATED AT:

_____, _____, California _____

PLEASE TAKE NOTICE that pursuant to the lease and/or rental agreement dated _____ under which you hold the possession of the herein described premises there is now due, unpaid and delinquent rent during the last twelve months in the total sum of \$0.00, as follows:

Total: \$0.00

PLEASE TAKE FURTHER NOTICE that within **THREE (3)** days after service of this notice, you are hereby required to pay the above-listed amount in full OR quit the subject premises, move out, and deliver up possession of the same to _____. Failure to pay the rent in full OR vacate the premises **WITHIN THREE (3)** days as required by this notice will result in forfeiture of the lease and/or rental agreement and will institute legal proceedings for an unlawful detainer against you to declare the lease or rental agreement void or forfeited, recover rent, damages and possession of said premises.

The following forms of payment will be accepted:

Make payment to: _____
Address: _____, _____

Payment must be made by _____ on _____
(Payment can be made in person between the hours of 9am and 5pm Monday through Sunday).
Phone Number: _____

THIS IS INTENDED AS A **THREE (3)** DAY LEGAL NOTICE FOR THE PURPOSE OF TERMINATING YOUR TENANCY. THIS TERMINATION OF TENANCY IS IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE § 1161.

LANDLORD RESERVES ALL THE RIGHTS AND REMEDIES PROVIDED UNDER THE

III. Your First Legal Steps: Responding to a Summons and Complaint

If the deadline specified in the notice has passed (3, 30, or 60 days), your landlord can start the legal case for your eviction by filing a Summons and Complaint and serving you a copy of it. As the tenant, your **first legal step in the unlawful detainer case** is to:

FILE AN ANSWER WITHIN 5 COURT DAYS* OF RECEIVING A COMPLAINT**

* See below for an explanation how substitute service or post and mail service affect this deadline.

****If a tenant fails to file an Answer with the court before the 5-court day deadline, the landlord can get a “Default Judgment” from the court against the tenant, meaning the tenant AUTOMATICALLY LOSES the case and the Sheriff can lock the small business owner out of their space.**

E-FILING

A tenant representing themselves have the choice to file their answer in person at the Alameda County Superior Courthouse or they may file [electronically](http://www.alameda.courts.ca.gov/Pages.aspx/civil-e-filing). (<http://www.alameda.courts.ca.gov/Pages.aspx/civil-e-filing>).

Any documents filed electronically and received by the Court between 12:00 a.m. and 11:59 p.m. on a court day are considered filed on that court day. Any document filed and received electronically on a non-court day are considered filed on the next court day.

For more information, visit the Alameda County Court’s [FAQ](#) on E-filing.

(<https://www.alameda.courts.ca.gov/online-services/civil-e-filing/civil-e-filing-faqs>).

IMPORTANT DEFINITIONS

Summons and Complaint

The “Summons” and “Complaint” are two separate documents delivered together by the landlord to alert the tenant that an eviction lawsuit has been filed against the tenant either directly or via the small business entity. The Summons and Complaint are the second set of documents received in the eviction process. The Complaint describes the landlord’s legal reasons for filing the lawsuit, and you should read the document carefully to understand the arguments that the landlord is making. Both the Summons and Complaint will typically be filed using official California court forms: “[SUM-130](https://www.courts.ca.gov/documents/sum130.pdf)” (<https://www.courts.ca.gov/documents/sum130.pdf>) for summons and “[UD-100](https://www.courts.ca.gov/documents/ud100.pdf)” (<https://www.courts.ca.gov/documents/ud100.pdf>) for complaints. Some landlords’ attorneys may use their own templates for the Complaint, but it still must contain all of the information the landlord would be required to include on Form UD-100.

Landlords must also attach a civil case cover sheet (see California court form “[UD-101](https://www.courts.ca.gov/documents/ud101.pdf),” <https://www.courts.ca.gov/documents/ud101.pdf>) and deliver it with the Summons.

Default or Default Judgment

If you do not defend yourself by filing an Answer or other response to the Complaint by the deadline, the landlord will obtain a default judgment against you. A default means that you failed to answer the complaint in the time required by law. If a default is entered against you, you CANNOT defend yourself in the case, and you may be forced to move from the property. If you do obtain a default judgement, there is still the option of requesting legal assistance so that your lawyer can file a Motion to set aside the default judgement.

WARNING: a default judgment against you could show on your credit report and make it harder for you to rent another place.

HOW TO FIGURE OUT YOUR DEADLINE TO ANSWER

Service

“Service” is a legal term for delivering a copy of a document that is filed with the court to another person/party involved in the lawsuit to let them know the document was filed. Your landlord had to serve you the Summons and Complaint. There are a few different methods of service and **your deadline to file an Answer may be affected by the method your landlord used.**

Methods of Service

- “**Personal service**” is when any other person over the age of 18 who is not involved in the lawsuit or a “hired process server” directly delivers the eviction notice to the opposing party.

- “**Substituted service**” is when the person delivering the document leaves it with a suitable person over the age of 18 because the party to be served is not at their business at the time of delivery. If substituted service is used, the person delivering the document must *also* mail a second copy of to the party being served at their business address.
- “**Posting and mailing service**” is when the person delivering the document tapes or nails it to the front door or somewhere else easily visible on the property because neither the party to be served nor any other suitable person is at the business at the time of delivery. If posting and mailing service is used, the person delivering the document must also mail a second copy to the party to be served at their business address.

The **Summons and Complaint** can only be served by substituted service, or posting and mailing service if certain requirements were met by the landlord:

- Before relying on substitute service, the server must try to personally deliver the summons and complaint at least two to three times, on different days and at different times of the day. The server must fill out a form that says what days and times they tried to serve the tenant in person and confirms that the server exercised “due diligence.”
- The landlord must get permission of the court to use posting and mailing service, *and* must attempt to serve the tenant via personal service and substituted service *and* write a declaration for the court that each of these types of service were unsuccessful before using posting and mailing service for the Summons and Complaint.
- **IF SUBSTITUTE SERVICE OR POSTING AND MAILING SERVICE WERE USED**, the Summons and Complaint are considered served 10 calendar days after the second copy is mailed, after which the tenant has 5 court days to file its Answer.

Court Days

“Court days” do not include weekends (Saturdays and Sundays) and [official judicial holidays](https://www.courts.ca.gov/holidays.htm) (<https://www.courts.ca.gov/holidays.htm>). Therefore, in counting how many days you have to file your answer, skip Saturdays, Sundays, and any official court holidays. Day 1 is the day after the *Summons and Complaint* were handed to you. If the forms weren’t handed to you, you have more time file and an *Answer*.

If you miss the deadline to file an *Answer*, you may still have time

- If your landlord hasn’t filed the *Request to Enter Default* form asking the court to move the case forward without you, you can still file an *Answer*. But do it right away because your landlord can ask for the default any time after your deadline to file.

A. Drafting Your Answer

Answer

The Answer is the document that the tenant files to respond to the Complaint and explain their arguments regarding the lawsuit.

An Answer form (Form UD-105) is available [here](https://www.courts.ca.gov/documents/ud105.pdf) (<https://www.courts.ca.gov/documents/ud105.pdf>).

This form must be filed by a person who is named as a Defendant in the Complaint. *Note: If your business is an LLC or any type of corporation, and your business was named on the Complaint, you need a legal representative to file these documents and cannot do it yourself.*

General and Specific Denials

The Answer should contain **denials**, if you think that something written in the Complaint was incorrect or if you do not know if something in the Complaint is correct. **IMPORTANT:** *Any statement that you do not deny or say you are unsure about in your Answer will be accepted as true by the Court and you will not be able to argue against it later on.* Denials should be listed item 2(b) of the UD-105 form.

When you read the Complaint, you will see a list of numbered statements as mini-paragraphs. If you think one of these statements is not true, you can deny it. You can also say that you do not have enough information to know if the statement is true or false. You deny something by listing the statement number in item 2(b) of the UD-105 form.

If the Complaint says you owe less than \$1,000, you can also deny all statements in the Complaint by checking box 2(a) to make a General Denial. If the Complaint says you owe more than \$1,000, you **must** individually deny applicable statements in the Complaint by checking box 2(b) to make a Specific Denial.

IMPORTANT: *Any statement that you do not deny or say you are unsure about will be accepted as true by the Court and you will not be able to argue against it later on.*

Defenses

The Answer should also contain your **defenses**, which are reasons why you should win the lawsuit. All defenses **must** be stated in the answer in order to be considered at trial. There are three important things to keep in mind about the defenses you choose to raise:

- If you state a defense, you have the burden of proving it at trial and therefore you must present evidence showing the facts that the defense is based on.
- For each defense asserted, you must check the appropriate box in paragraph 3 of Form UD-105 **and** state brief facts to support it in item 3w (on page 4 of Form UD-105), or on form [MC-025](https://www.courts.ca.gov/documents/mc025.pdf) (<https://www.courts.ca.gov/documents/mc025.pdf>) if more room is needed.
- You must raise a defense in your Answer in order to argue it at trial (you cannot argue any defense that does not appear in your Answer). Seek legal assistance to file an *Amended Answer* if you want to argue a defense that you forgot to include in your Answer.

A filing checklist that explains all of the supporting forms that must be included with an Answer and the procedure for filing each is available at [the end of Section III](#) of this guide. Section B below, explains the defenses commercial tenants typically raise and how to raise them using Form UD-105. A sample version of Form UD-105 with instructions on how to complete the form and raise the most common defenses for commercial tenants is included in [Section VI](#).

B. Sample Legal Defenses for Commercial Tenants

This section describes the most commonly asserted legal defenses for commercial tenants and some information about how to plead these defenses in an Answer document. The first section describes defenses based on the landlord's or their attorney's errors in filing the unlawful detainer lawsuit. The second set of defenses in this section are called affirmative defenses and these are reasons why you should win the lawsuit based on particular facts that may have occurred.

For each defense asserted, you must state brief facts to support it in item 3w (on form UD-105 page 4), or if more room is needed on form [MC-025](https://www.courts.ca.gov/documents/mc025.pdf). (<https://www.courts.ca.gov/documents/mc025.pdf>). [Section VI](#) includes a sample Answer document and MC-025 attachment, which have sample language for all of the defenses described in this section.

i. Defenses Based on Notice Requirements

Each document used or filed throughout the eviction process has certain requirements for:

- how it is delivered;
- what format it is delivered in;
- what details are included; and
- what secondary documents must be attached.

California and local laws mandate these requirements; if the requirements are not met, the party responsible for the document can **lose the case**. Therefore, you should **look out for any “defects” in the Notice or Summons and Complaint and assert them in your Answer, which may get the eviction case dismissed**. The below subsections outline the statutory requirements for eviction notices and unlawful detainer summons and complaints and how to raise related defenses in your Answer.

Check if the Notice Follows the Law:

The details that must be included in a notice depends on the type of notice, as outlined below:

Notice to Perform Covenants or Quit

Landlords use this type of notice when tenants are violating terms of the lease. It must include:

- Full name of tenant(s);
- Address of commercial rental property;
- Covenants (specific actions) to be performed to resolve violation; and
- Deadline to perform covenants.

Notice to Quit

Landlords use this type of notice when tenants are causing “nuisance” or illegal conduct. It must include:

- Full name of tenant(s);
- Address of commercial rental property;
- Actions resulting in eviction (“nuisance,” illegal conduct, threats to public health, etc.); and
- Deadline to quit (move out).

Notice to Pay Rent or Quit

Landlords use this type of notice when tenants are behind on rent. It must include:

- Full name of tenant(s);
- Address of commercial rental property;
- Rent amount due* for up to 1 year;
- Deadline to pay rent;
- Name, address, and phone number of person to whom rent is due; and
- Method of payment:
 - *If rent is to be paid in person*, usual days and hours such person is available to accept payment;**
 - *If rent is to be paid at a financial institution*, account number and name and street address*** of such institution;
 - *If rent is to be paid via a previously established electronic funds transfer (EFT) procedure*, state rent to be paid via EFT.

Notes on Notices to Pay Rent or Quit

* The landlord can include a *reasonable estimate* of the rent amount due as long as they note it is an estimate. A reasonable estimate is one that is no more than 20% more or less than the actual rent amount due.

** If the tenant is unable to personally deliver the rent amount due, the tenant may mail the rent to the listed address. The tenant must show proof of mailing.

*** If rent is to be paid at a financial institution, such institution must be located within 5 miles of the commercial rental property.

Defenses for Notices

Consult the sample Answer below, [Section VI](#), for sample descriptions of the defenses related to Notice defects.

Requirements and Defenses Checklist for Notices

Answer each of the questions below. Then follow the action that corresponds to each answer. Actions listed in yellow are potential defenses and reasons to ask the court to dismiss the case. Look at the column labeled “UD-105 Checkbox” to identify which box to check on the Answer form, UD-105, to raise the defense and consult the sample Answer in [Section VI](#) for sample descriptions of the defenses.

Question	Answer	Action	UD-105 Checkbox
General			
1. Does the lease contain notice provisions?	Yes	Make sure the notice fulfills the requirements of the lease; the lease controls over this checklist. When the lease is silent or does not contain specific provisions for each of the elements listed below, use this checklist as a supplement to the lease.	
	No	Continue reviewing the questions below.	
2. Did the landlord wait <u>until after the notice deadline</u> to file an eviction case in court?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
3. Did the tenant pay the rent amount due or perform the covenants (specific actions) by the notice deadline?	Yes	Defense: Ask the court to dismiss the eviction case!	3(c)
	No	Continue reviewing the questions below.	
Delivery			
4. If someone delivered the notice directly to the tenant, was the person	Yes	Continue reviewing the questions below.	

who delivered the notice <u>at least 18 years of age</u> ?	No	Defense: Ask the court to dismiss the eviction case!	3(d)
5. If someone delivered the notice to someone other than the tenant, was the person who received the notice <u>a suitable person at least 18 years of age</u> ?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
6. If someone delivered the notice to someone other than the tenant, did the landlord <u>also mail a second copy to the tenant at their business address</u> ?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
7. If someone posted the notice to the front door or somewhere else easily visible on the commercial property, did the landlord <u>also mail a second copy to the tenant at their business address</u> ?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
Format			
8. Did the tenant receive the notice <u>in writing</u> ?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
Details			
9. Does the notice request the rent amount due by the deadline?	Yes	Review "Notice to Pay Rent or Quit" section below.	
	No	Continue to Question 10.	
Notice to Pay Rent or Quit			
9a. Does the notice include the tenant's full name?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
9b. Does the notice include the address of the commercial rental property?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
9c. Does the notice include the rent amount due?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
9d. Is the rent amount due for more than 1 year?	Yes	Defense: Ask the court to dismiss the eviction case!	3(d)
	No	Continue reviewing the questions below.	
9e. If the rent amount due is an estimate, does the notice include <u>language</u>	Yes	Continue reviewing the questions below.	

indicating it is an estimate, and is the estimate within 20% of the accurate number?	No	Defense: Ask the court to dismiss the eviction case!	3(d)
9f. Does the notice include the deadline to pay the rent amount due?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
9g. Does the notice include the name, address, and phone number of the person to whom rent is due?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
9h. Does the notice include the method of payment?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
9i. <i>If rent is to be paid in person</i> , does the notice include the usual days and hours such person is available to accept payment?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
9j. <i>If rent is to be paid at a financial institution</i> , does the notice include the account number and name and street address of such institution?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
9k. <i>If rent is to be paid at a financial institution</i> , is such institution within 5 miles of the rental property?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
9l. <i>If rent is to be paid via a previously established electronic funds transfer (EFT) procedure</i> , does the notice state rent is to be paid via EFT?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
10. Does the notice request specific actions to be performed by the deadline?	Yes	Review "Notice to Perform Covenants or Quit" section below.	
	No	Continue to Question 11.	
Notice to Perform Covenants or Quit			
10a. Does the notice include the tenant's full name?	Yes	Continue reviewing the questions below.	
	No	Defense: Ask the court to dismiss the eviction case!	3(d)
10b. Does the notice include the address of the commercial rental property?	Yes	Continue reviewing the questions below.	

	No	<u>Defense:</u> Ask the court to dismiss the eviction case!	3(d)
10c. Does the notice include the covenants (specific actions) to be performed to resolve the violation?	Yes	Continue reviewing the questions below.	
	No	<u>Defense:</u> Ask the court to dismiss the eviction case!	3(d)
10d. Does the notice include the deadline for the covenants (specific actions) to be performed?	Yes	Continue reviewing the questions below.	
	No	<u>Defense:</u> Ask the court to dismiss the eviction case!	3(d)
11. Does the notice require the tenant to quit (or move out) by the deadline?	Yes	Review “Notice to Quit” section below.	
	No	There are no other potential defenses or reasons for dismissal in regard to notices. Skip to the next section of this guide.	
Notice to Quit			
11a. Does the notice include the tenant’s full name?	Yes	Continue reviewing the questions below.	
	No	<u>Defense:</u> Ask the court to dismiss the eviction case!	3(d)
11b. Does the notice include the address of the commercial rental property?	Yes	Continue reviewing the questions below.	
	No	<u>Defense:</u> Ask the court to dismiss the eviction case!	3(d)
11c. Does the notice detail the reason that the tenant is being evicted?	Yes	Continue reviewing the questions below.	
	No	<u>Defense:</u> Ask the court to dismiss the eviction case!	3(d)
11d. Does the notice include the deadline to quit (move out)?	Yes	Continue reviewing the questions below.	
	No	<u>Defense:</u> Ask the court to dismiss the eviction case!	3(d)

ii. Affirmative Defenses

The following defenses are called affirmative defenses because they require the tenant to present facts and argue that they apply. This list of sample defenses for commercial tenants is not comprehensive, but captures the defenses that commercial tenants most commonly raise in unlawful detainer lawsuits. The list also provides the UD-105 checkbox that should be checked to add the defense to your Answer and facts to include in your explanation of the defense (on MC-025) or using evidence at trial.

IMPORTANT: If you state a defense, you have the burden of proving it at trial and therefore you must present evidence showing the facts that the defense is based on.

Defense	Explanation	UD-105 Checkbox	Supportive Facts
Retaliatory eviction	Examples of possible retaliatory eviction include a landlord raising a tenant's rent or commencing eviction proceedings after a tenant has complained about problems with their rental.	3(e)	Facts showing the tenant tried to assert their rights; dates as to when the tenant tried to assert their rights and when the landlord served the eviction notice or Summons and Complaint
Discrimination	Federal and state law make it illegal to discriminate against a tenant based on race, national origin, gender, disability, and certain other characteristics. Thus, if a landlord tries to evict a tenant for discriminatory reasons, then the tenant can raise this as a defense.	3(f)	Discriminatory statements, slurs, gestures or remarks; different treatment by the landlord of other tenants based on protected characteristics
Constructive eviction	Commercial tenants enjoy a covenant of quiet enjoyment, which is implied into every lease or rental agreement. If the landlords' actions or omissions interfere with the tenant's right to peaceful and beneficial possession of the rental unit, as to render the unit or a portion of it uninhabitable, a constructive eviction may have occurred.	3(v)	Facts showing the landlord entered the unit without notice or interfered with the tenant's business; facts showing landlord's actions made business impossible
Landlord in breach	If the tenant can prove that the landlord breached the lease agreement as well, then this may serve as a defense against the eviction.	3(v)	Lease provisions requiring the landlord to take certain actions; facts showing the landlord has failed to uphold their promises in the lease
Frustration of purpose	Commercial leases are typically negotiated for a very particular purpose or use of the property. If it turns out that the particular purpose that the lease serves has been frustrated (made impossible), then the tenant's may no longer be obligated to do what they have promised under the lease contract. The COVID-19 pandemic and related government health orders are some examples of what may have frustrated the purpose of a lease.	3(v)	Lease provision showing particular purpose; facts showing particular purpose or use specified in lease is now impossible (include the months that the business needed to be completely shut down due to COVID-related government mandate)

Waiver	A person who signs a contract, including a lease agreement, may waive rights that person has under the contract if they do not seek to enforce them when they are able. Therefore, if the landlord is seeking eviction to enforce a certain aspect of the contract, the tenant can raise the defense of waiver if the landlord has repeatedly refused or failed to enforce that aspect of the contract in the past.	3(v)	The particular term of the lease agreement the landlord may be seeking to enforce; the landlord's past practices with respect to the lease term in dispute
Estoppel	When one party to a contract makes certain promises that the other party relies on, but that turn out to be false or to put the other party in a worse position than they would be otherwise, you can assert the defense of "Estoppel". If a dispute arises between the parties that is related to these promises, the party that made the promises may be estopped (legally prevented) from getting anything from the other side that relied on their promises to their own detriment.	3(v)	Facts showing the landlord made certain promises; facts showing the tenant relied on (made investments or otherwise changes position) based on that promise; facts showing the current dispute is related to the landlord's promises
Good faith and fair dealing	As a commercial entity and party to a contract, landlords have a duty to bargain in good faith and deal fairly in negotiating lease agreements and managing properties. If the landlord has made false or misleading representations or is using unfair or abusive practices in managing the property, they may be prevented from recovering possession from the tenant through an eviction.	3(v)	Facts showing the landlord has used misleading, fraudulent, unfair or abusive tactics in negotiating the lease or managing the property
Unclean hands	Unclean hands is the legal idea that a party should not benefit if they have done something illegal to create a situation.	3(v)	Facts showing landlord has done something wrong or illegal that has created the situation leading to a tenant's eviction

C. Service of Process

Before filing your answer to the court, you will need to (1) have your landlord be served a copy of your Answer and (2) complete the proof of service form ([POS-030](#)).

Begin by making copies of each form in your lawsuit, including two copies of your Answer. You then need to find an adult to “Serve” the landlord (or their attorney if they are represented):

- Ask an adult at least 18 years of age who is not a party in your case, to fill out the proof of service form, [form POS-030](https://www.courts.ca.gov/documents/pos030.pdf) (<https://www.courts.ca.gov/documents/pos030.pdf>), but do **not** sign it.
- That same person should then mail the following documents to the landlord or his attorney:
 - An unsigned copy of the proof of service form POS-030 (make sure that you send a copy, and not the original)
 - Copy of the Answer, UD-105 (make sure that you send a copy and not the original)
 - Copy of any attachments to the Answer, e.g., MC-025.
- The same person should sign the POS-030 after mailing the copies listed above and return the signed form to you.
- Do not mail a copy of your fee waiver request or order to your landlord or his attorney.

Once you have completed the above steps, you can proceed to file the original copies of your Answer, signed proof of service, and fee waiver request with the Clerks’ office at the Alameda County Superior Court, or at the address listed at the top of your complaint.

The **Answer** can be served on the landlord (or their attorney if represented) by mail but must be mailed by a process server or someone else who is 18 years or older and not involved in the lawsuit. This person must also complete a proof of service telling the court that the document was mailed.

D. Fee Waiver

In order for the court to accept your Answer or any other document, you must pay a filing fee. For the Answer, this fee is \$225; fees for other filings are listed on the court's [fee schedule](http://www.alameda.courts.ca.gov/Resources/Documents/ExecOffice/Civil/2020%20Civil%20Fee%20Schedule%20emergency%20version%20effective%20September%2010,%202021.pdf) (<http://www.alameda.courts.ca.gov/Resources/Documents/ExecOffice/Civil/2020%20Civil%20Fee%20Schedule%20emergency%20version%20effective%20September%2010,%202021.pdf>). You may qualify for a fee waiver if you fit *any* of the three requirements:



- If you are receiving public benefits, like Medi-Cal, Food Stamps (CalFresh), Cal-Works, General Assistance, SSI, SSP, Tribal TANF, IHHS or CAPI;
- If your household income, before taxes, is less than the amounts listed on Form FW-001 in item 5b; *OR*
- If the court finds that you do not have enough income to pay for your household's basic needs AND the court fees.

Fee Waiver Forms

If you feel you qualify for the fee waiver, please fill out the [FW-001 form](https://www.courts.ca.gov/documents/fw001.pdf) (<https://www.courts.ca.gov/documents/fw001.pdf>)

To request to waive additional court fees, fill out the [FW-002 form](https://www.courts.ca.gov/documents/fw002.pdf) (<https://www.courts.ca.gov/documents/fw002.pdf>).

You should also fill out the [FW-003 form](https://www.courts.ca.gov/documents/fw003.pdf) (<https://www.courts.ca.gov/documents/fw003.pdf>).

Fill the forms with the help of [this guidance from California courts](https://www.courts.ca.gov/selfhelp-feewaiver.htm?rdeLocaleAttr=en) (<https://www.courts.ca.gov/selfhelp-feewaiver.htm?rdeLocaleAttr=en>) and use the [instructions for FW-002](#)  and [instructions for FW-003](#)  as a guide.

E. Filing Checklist

<p>IMPORTANT: you have ONLY 5 court days after receiving the <i>Summons & Complaint</i> to file your Answer, Attachment, + Proof of Service at the court.</p> <ul style="list-style-type: none"> Do NOT count the day you were served, weekends or holidays. <p>Your Answer Filing Deadline is: _____</p> <p>(See cover sheet of this packet for guidance on how to calculate your deadline).</p>	
<input type="checkbox"/> Step 1 Fill out forms	<p>Fill out the following forms in black or blue ink:</p> <p><input type="checkbox"/> [UD-105] Answer-Unlawful Detainer</p> <p><input type="checkbox"/> MAKE SURE YOU SIGN YOUR NAME TWICE ON BOTTOM OF PAGE 3 (see sample)</p> <p><input type="checkbox"/> [MC-025] Attachment(s)</p> <p><input type="checkbox"/> [POS-030] Proof of Service by First-Class Mail–Civil</p> <p>Note: filing an Answer costs \$225 per person. If you can't afford this fee, fill out the following 2 forms as well:</p> <p><input type="checkbox"/> Request to Waive Fees [FW-001] + <input type="checkbox"/> Order on Fee Waiver [FW-003]</p>
<input type="checkbox"/> Step 2 Make copies	<p>Make 2 copies of:</p> <p><input type="checkbox"/> [UD-105] Answer</p> <p><input type="checkbox"/> [MC-025] Attachment(s)</p> <p><input type="checkbox"/> [POS-030] Proof of Service by First-Class Mail–Civil</p> <ul style="list-style-type: none"> File the originals in court One copy of each will be for the landlord (or their attorney) Keep one copy for your records <p>Make 1 copy of:</p> <p><input type="checkbox"/> [FW-001] Request to Waive Fees + <input type="checkbox"/> [FW-003] Order on Fee Waiver</p> <ul style="list-style-type: none"> Hold on to the original to be filed in court. Keep one copy for your records
<input type="checkbox"/> Step 3 Serve the Plaintiff/ Landlord (or their Attorney)	<p>Serve a copy of:</p> <p><input type="checkbox"/> [UD-105] Answer + <input type="checkbox"/> [MC-025] Attachment(s) + <input type="checkbox"/> [POS-030] Proof of Service by First-Class Mail–Civil</p> <p>By law, you cannot serve the papers yourself. You MUST have someone who is at least 18 years old AND does NOT live with you, mail a copy of your Answer + Attachment(s) + copy of the proof of service to the plaintiff/landlord (or their attorney). You can ask a friend, relative, etc. to do this for you, or you can hire a “process server” to do it.</p> <ul style="list-style-type: none"> After mailing the papers, the server must sign and return the original Proof of Service to you to be filed in court.
<input type="checkbox"/> Step 4 File originals	<p>YOU MUST FINISH STEP 3 BEFORE YOU MAY PROCEED TO THIS STEP!</p> <p>Turn in the <u>original & copies</u> of the Answer, Attachment(s), + Proof of Service at the Clerk's Office at the Superior Court (see address on summons & complaint).</p> <p>If you need a fee waiver, you should file the 2 completed Fee Waiver forms FW-001 and FW-003 at the same time.</p> <ul style="list-style-type: none"> The Court Clerk will keep the originals and return the copies to you. Keep the copies in a safe place after they are “filed stamped” by the Court Clerk.
<input type="checkbox"/> Step 5 What happens next	<p>After you file these papers, the landlord may file a form called Request/Counter- Request to Set Case for Trial– Unlawful Detainer [UD-150]. The court will schedule your trial shortly after filing and mail you a letter with your <u>trial date</u>.</p> <p>MAKE SURE YOU CHECK YOUR MAIL AND ATTEND ALL COURT DATES</p>

IV. Negotiation Resources

We suggest that you continue to try to negotiate with your landlord at every step of your lawsuit. Even after receiving a 3-day notice, a 30 or 60 day notice to quit, it is still not too late to negotiate. (once you receive an Unlawful Detainer complaint, your focus should be on responding to the answer within the 5 court day deadline, but then you can resume negotiations.)

There are [mediation services](#) available to you as Alameda County residents. You may be able to request mediation at the courthouse on the day of your trial date. (<https://selfhelp.courts.ca.gov/eviction-mediation>).

The majority of eviction cases are settled without going to court - you should try to settle with your landlord as well. You should make clear to your landlord that if he goes ahead with the court proceeding, he may waste time and money, and still not be able to recover the rent that is owed from you. Emphasize that the landlord's best bet is to extend your lease and give you more time to generate business revenue in order to pay back the debts that are due. If you wish to move locations, end your lease early, and find a new subtenant, emphasize to your landlord that it is possible to find someone to pay rent going forward, and that is a better use of the landlord's time and energy to look for a new tenant than taking you to court.



V. Preparing For Trial: Next Steps

Trial Date

After you file your Answer form, your landlord (or you) can file a *Request to Set Case for Trial - Unlawful Detainer* (form [UD-150](#), <https://www.courts.ca.gov/documents/ud150.pdf>). The *Request* form tells the judge if the person filing the *Request* wants a judge or jury trial, how long they think the trial will last, and what issues they want the judge or jury to decide. The party filing this form must mail a copy of this *Request* to the other party.

Then, the court will mail you a letter with your court date. It will be **within 20 days of when your landlord files the *Request***. Note that the notice from the court may take several days to arrive, which may leave you with little time to prepare for your trial – you can call the Alameda County Superior Court Clerk at 510-267-6911 or use the Court's [online portal](#) (<http://apps2.alameda.courts.ca.gov/findyourcourtdataviews/query-listing.aspx>) to determine your trial date as soon as possible after filing your Answer.

- If you will be unavailable (out of town) on particular days or want to request a jury trial, you can file a *Counter-Request* on the same form (UD-150).
 - If you do want to file a Counter request, fill out *Request to Set Case for Trial - Unlawful Detainer* (form [UD-150](#), <https://www.courts.ca.gov/documents/ud150.pdf>). Check the box for “COUNTER-REQUEST” on the form.
 - Have someone 18 or older mail a copy to the landlord (or their attorney) and fill out the back of the original *Request*.
 - File the original and another copy with the court. Keep another copy for your records.

Judge or Jury Trial

You and your landlord have a right to a jury trial. It costs \$150, plus you will need to pay a daily fee for the jurors during the trial. If you [ask for a fee waiver](#), the court may waive the jury fees.

You can ask for a jury trial by filing a *Request* (form [UD-150](#)) and checking the box for jury trial.

- If you are requesting a jury trial and submitted a fee waiver in lieu of the filing fee for your Answer, you should also complete and submit form [FW-002](#) (<https://www.courts.ca.gov/documents/fw002.pdf>) to waive the costs and court fees associated with a jury trial. Otherwise, you must deposit \$150 with the court at least five days prior to your trial date to cover these costs.

Discovery and Evidence

During the Unlawful Detainer trial, the landlord will present evidence about why you should be evicted, and you will be able to present counterevidence about why you should not be evicted.

First, the landlord will present their facts, evidence, and the law that they think supports them. Next, you'll have the opportunity to present your case, or give testimony to the judge. This can be easier if you write up a list of your testimony in advance with all the important facts and details you want the judge to hear, with the accompanying documentation. Your testimony should be based on the facts you included in your Answer and any evidence you get from the other side through discovery.

“Discovery” is a general term for investigating and collecting facts, testimony, and witnesses to support the arguments that each side intends to make during trial. You are allowed to ask the landlord (or their attorney, if they have one) questions about facts that are relevant to your case and to request any **evidence**, such as photos, emails, or papers that will help you prove your defense(s) and make your case. Typically, the party responding to the request has five days to do so and all responses must be provided no later than five days prior to the trial date.

If you make discovery requests and the other side responds with evidence, do not forget to bring that evidence with you on your court date. Make copies so you can give one copy to the judge and one copy to the other side (your landlord or your landlord's attorney).

Your landlord may also request pieces of evidence from you before the trial. You should try to respond as fully as possible by the date requested (and no later than five days before trial), but you also have the right to object. The landlord does not have the right to ask for all your financial documents that are not relevant to the Unlawful Detainer case.

Here are examples of objections that you might assert if the landlord requests information from you that you don't think is fair:

- “Irrelevant” on the ground that it seeks information not relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of relevant, admissible evidence.
- Vagueness, ambiguity, or overly broad as to the scope of the material being requested.
- Objection based on the ground that the landlord seeks protected, private, or
 - confidential information without any showing of need for the information.
- To comply with the request would be an undue burden and expense on Responding
 - Party. CCP § 2030.090(b); Columbia Broadcasting System, Inc. v. Superior Court (1968) 263 Cal.App.2d 12, 19.
- You may even object to information being requested if it is an unwarranted annoyance and embarrassment, is oppressive, and is intended to annoy and harass you.

Because unlawful detainer lawsuits happen quickly, it is relatively uncommon for landlords and tenants to make discovery requests. Nevertheless, you should think carefully about what evidence you will need to prove your case and seek legal assistance to make discovery requests if that will be necessary to get the evidence you need.

More information on discovery requests is available [here](https://www.courts.ca.gov/1093.htm?rdeLocaleAttr=en) (<https://www.courts.ca.gov/1093.htm?rdeLocaleAttr=en>).

Witnesses

A witness is someone who can help back up your story because they actually saw or heard something that's important to your case.

You may have a witness whose testimony can help prove your defense, but the only way you can get the story out is by asking the witness questions. It is helpful write up the questions you want to ask the witness before you go to court.

Witnesses will usually wait outside the courtroom until it's their turn to testify so they can't hear what other people may have already said. Say to the judge, “I would like to call [full name of witness], as a witness, your Honor.” Court staff will then get the person and direct them to the witness stand.

Settlement

The day of your trial, the judge may ask you and the other side to step outside the courtroom to discuss your case to see if you can agree without a trial. This can be an effective way to resolve your case, but you should approach the settlement negotiation with care and ask questions to make sure you understand every term in any settlement offer or agreement.

Two particularly important questions for tenants are (1) whether the agreement requires the tenant to stipulate to judgement and (2) whether the agreement affects the tenant's right to a stay of execution.

A **Stipulated Judgment** is a judgment that the parties agree to and write out ahead of time which a judge will sign into order if it is enforceable. Stipulating to judgment, as opposed to agreeing to settle the case without judgment, can impact your credit record and ability to rent space in the future.

If you settle your case and you and the other side, or their attorney, make an agreement, do not leave the court without a copy of the agreement. Don't wait to get a copy of the agreement in

the mail. Tell the other side that you'll wait in the courtroom for a copy. Having a copy helps to prevent misunderstandings during a stressful time.

AFTER TRIAL LEGAL STEPS:

Judgment and Execution (LOCK-OUT)

Once you and your landlord have had a chance to present your case, the judge will make a decision. Listen carefully so you know what to do next. Ask the court clerk for a copy of the judgment that says what the judge decided.

If the judge (or a jury) decides the landlord has the right to evict you, the judge will give the landlord a *Judgment of Possession*. They may also order you to pay back rent, damages, penalties, and costs, like filing fees and attorney fees (if this is in the rental agreement).

- The court will give the landlord a *Judgment of Possession* (form UD-110), <http://www.courts.ca.gov/documents/ud110.pdf>). This gives the landlord control (possession) of the property.
- Then, the landlord will fill it out and have the court clerk issue a *Writ of Execution* (form EJ-130, <https://www.courts.ca.gov/documents/ej130.pdf>). They take the *Writ* to the sheriff's office. This gives the sheriff permission to lock you out of your leased business space.
- The sheriff will serve you with a Notice to Vacate (notice to move from) your leased space. This gives you 5 days to move. If you don't move, the sheriff will remove your possessions and lock you out.

Illegal or Unlawful Lock-out

Only a sheriff with a court order can lock-out a tenant from the leased space. It is illegal for a landlord to take matters in their own hands to lock-out or remove a tenant. If a landlord is attempting to do that, the landlord is breaking California law and will face penalties. You should seek the assistance of a lawyer if your landlord is unlawfully locking you out of your leased space, even if you owe rent or are violating the lease agreement.

Stay of Execution

You can ask the court for more time to move out, up to forty days, (called a **stay of execution**) if you need more time to move following judgment. However, *on the same day that you request the stay*, you must pay the total combined daily rental value for all of the days you request to stay in the unit after the judge ordered you to move out. The daily rental value should be listed in the Complaint, and should be approximately your monthly rent divided by 30.

For example, if you want to request a stay of 20 days, and your monthly rent is \$3600, you must pay \$2,400 when you make the request ($\$3600 / 30 = \120 daily rental value; $\$120 \times 20 \text{ days} = \$2,400$). *If you do not pay in advance for the days you request, the court will not grant your stay of execution and the Sheriff will go forward with the lock-out.*

IMPORTANT: The timeline for requesting a stay is very short, and you should seek legal assistance immediately if you need to request a stay of execution. You can only request a stay of execution after receiving the sheriff's Notice to Vacate and at least one *court day* before the Notice to Vacate says you must leave the unit. You also must tell your landlord that you plan to request the stay at least 24 hours before making the request with the court.

There are no court forms available for requesting a stay, which is another reason you should seek legal assistance if you need to request a stay. An attorney will be able to format your request properly and assist you in providing the required notices described above.

VI. Model Answer

Instructions:

- Carefully read all documents related to your case, including all Notices, the Summons & Complaint including all attachments, and your lease agreement.
- Review [Sections II – III](#), above, to understand your obligations with respect to filing and serving the Answer in a timely manner.
- Work through the tables in Section III to determine which defenses apply to your case.
- Look at the Model Answer in this section to identify how to raise the defense in your answer.
 - *Note: The boxes checked in Section 3 of the Model Answer form have been filled out to reflect the most common defenses for commercial tenants. In your Answer, check only those boxes that are needed for the defenses that apply to your case.*
- Download a blank copy for the [Answer form \(UD-105\)](#), (<https://www.courts.ca.gov/documents/ud105.pdf>) and complete it with your case information and relevant defenses. Use form [MC-025](#) (<https://www.courts.ca.gov/documents/mc025.pdf>) if more room is needed to state facts to support your defenses.
- **FILE AND SERVE YOUR ANSWER BEFORE THE 5-COURT DAY DEADLINE**

UD–105 Model Answer:

The model unlawful detainer in this section has been annotated to illustrate how to complete this document. Please consult the key and instructions on this page while examining the Model Answer on the following page.

Key:

- **CAPITALIZED RED TEXT SHOULD BE REPLACED WITH INFORMATION FROM YOUR CASE**
- **ITALICIZED RED TEXT IS EXPLANATORY INFORMATION**
- **Lowercase red text is sample wording for common legal defenses***
- **Blue text will be the same for most cases in Alameda County** (tenants in other counties should replace the address information printed in blue on the first page of the Model Answer with the address for their county courthouse, which should be listed on the Complaint)

*** In your Answer, include only the defenses that the facts of your case support. Seek legal assistance to determine if a particular defense is supported by the facts of your case. The sample wording provided in this Model Answer is for your informational purposes only and should not be construed as legal advice.**

- Page 1 of 5

PLAINTIFF: LANDLORD'S NAME (EXACTLY HOW IT APPEARS ON THE COMPLAINT)	CASE NUMBER:
DEFENDANT: YOUR NAME (EXACTLY HOW IT APPEARS ON THE COMPLAINT)	XXCVXXXXXX (COPY FROM COMPLAINT)

2. b. (2) (d) Defendant has no information or belief that the following statements on the *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)(d).
3. **DEFENSES AND OBJECTIONS** (NOTE: For each box checked, you must state brief facts to support it in item 3w (on page 4) 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.)
- 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): **DATE (IF APPLICABLE)** before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d. ☒ Plaintiff waived, changed, or canceled the notice to quit. **< CHECK THIS BOX IF THE NOTICE IS IMPROPER IN ANY WAY**
- e. ☒ Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- f. ☒ 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.
- g. ☒ 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): **< CHECK THIS BOX IF YOU CAN CLAIM PROTECTIONS OF A CITY OR COUNTY COVID-19 EVICTION MORATORIUM**
(Also, briefly state in item 3w the facts showing violation of the ordinance.)
- h. ☐ 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 3w 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.
- i. ☒ Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- j. ☐ Plaintiff seeks to evict defendant based on an act against defendant or a member of defendant's household that constitutes domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (This defense requires one of the following: (1) **a temporary restraining order, protective order, or police report that is not more than 180 days old**; OR (2) **a signed statement from a qualified third party** (e.g., a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist) concerning the injuries or abuse resulting from these acts.)
- k. ☐ 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.
- l. ☐ Plaintiff's demand for possession of a residential property is in retaliation for nonpayment of rent or other financial obligations due between March 1, 2020, and September 30, 2021, even though alleged to be based on other reasons. (Civ. Code, § 1942.5(d); Gov. Code, § 12955.)
- m. ☐ Plaintiff's demand for possession of a residential property is based on nonpayment of rent or other financial obligations due between March 1, 2020, and September 30, 2021, and (check all that apply):
- (1) ☐ Plaintiff did not serve the general notice or notices of rights under the COVID-19 Tenant Relief Act as required by Code of Civil Procedure section 1179.04.
- (2) ☐ Plaintiff did not serve the required 15-day notice. (Code Civ. Proc., § 1179.03(b) or (c).)

PLAINTIFF: LANDLORD'S NAME (EXACTLY HOW IT APPEARS ON THE COMPLAINT)	CASE NUMBER:
DEFENDANT: YOUR NAME (EXACTLY HOW IT APPEARS ON THE COMPLAINT)	XXCVXXXXXX (COPY FROM COMPLAINT)

3. m. (3) ☐ Plaintiff did not provide an unsigned declaration of COVID-19–related financial distress with the 15-day notice. (Code Civ. Proc., § 1179.03(d).)
- (4) ☐ Plaintiff did not provide an unsigned declaration of COVID-19–related financial distress in the language in which the landlord was required to provide a translation of the rental agreement. (Code Civ. Proc., § 1179.03(d).)
- (5) ☐ Plaintiff identified defendant as a “high-income tenant” in the 15-day notice, but plaintiff did not possess proof at the time the notice was served establishing that defendant met the definition of high-income tenant. (Code Civ. Proc., § 1179.02.5(b).)
- (6) ☐ Defendant delivered to plaintiff one or more declarations of COVID-19–related financial distress and, if required as a “high-income tenant,” documentation in support. (Code Civ. Proc., §§ 1179.03(f) and 1179.02.5.)
(Describe when and how delivered and check all other items below that apply):
- (a) ☐ Plaintiff's demand for payment includes late fees on rent or other financial obligations due between March 1, 2020, and September 30, 2021.
- (b) ☐ Plaintiff's demand for payment includes fees for services that were increased or not previously charged.
- (c) ☐ Defendant, on or before September 30, 2021, paid or offered plaintiff payment of at least 25% of the total rental payments that were due between September 1, 2020, and September 30, 2021, and that were demanded in the termination notices for which defendant delivered the declarations described in (a). (Code Civ. Proc., § 1179.03(g)(2).)
- (7) ☐ Defendant is currently filing or has already filed a declaration of COVID-19–related financial distress with the court. (Code Civ. Proc., § 1179.03(h).)
- n. ☐ Plaintiff's demand for possession of a residential property is based on nonpayment of rent or other financial obligations due between October 1, 2021, and March 31, 2022, and (check all that apply):
- (1) ☐ Plaintiff's notice to quit did not contain the required contact information for the pertinent governmental rental assistance program, or the other content required by Code of Civil Procedure section 1179.10(a).
- (2) ☐ Plaintiff's notice to quit did not include a translation of the statutorily required notice. (Code Civ. Proc., § 1179.10(a)(2) and Civ. Code, § 1632.)
- o. ☐ For a tenancy initially established before October 1, 2021, plaintiff's demand for possession of a residential property is based on nonpayment of rent or other financial obligations due between March 1, 2020, and March 31, 2022, and (check all that apply):
- (1) ☐ Plaintiff did not complete an application for rental assistance to cover the rental debt demanded in the complaint before filing the complaint in this action.
- (2) ☐ Plaintiff's application for rental assistance was not denied.
- (3) ☐ Plaintiff's application for rental assistance was denied for a reason that does not support issuance of a summons or judgment in an unlawful detainer action (check all that apply):
- (a) ☐ Plaintiff did not fully or properly complete plaintiff's portion of the application. (Code Civ. Proc., § 1179.09(d)(2)(A).)
- (b) ☐ Plaintiff did not apply to the correct rental assistance program. (Code Civ. Proc., § 1179.09(d)(2)(C).)
- (4) ☐ Rental assistance has been approved and tenant is separately filing an application to prevent forfeiture (form UD-125).
- p. ☐ 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).)
- (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).)

PLAINTIFF: LANDLORD'S NAME (EXACTLY HOW IT APPEARS ON THE COMPLAINT)	CASE NUMBER:
DEFENDANT: YOUR NAME (EXACTLY HOW IT APPEARS ON THE COMPLAINT)	XXCVXXXXXX (COPY FROM COMPLAINT)

3. q. ☐ 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 3w*).
- r. ☐ 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.*)
- s. ☐ 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.
- t. ☐ Plaintiff refused to accept payment from a third party for rent due. (Civ. Code, § 1947.3; Gov. Code, § 12955.)
- u. ☐ Defendant has a disability and plaintiff refused to provide a reasonable accommodation that was requested. (Cal. Code Regs., tit. 2, § 12176(c).)
- v. ☒ Other defenses and objections are stated in item 3w.
- w. (*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 3w.

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.
- 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.

PLAINTIFF: LANDLORD'S NAME (EXACTLY HOW IT APPEARS ON THE COMPLAINT)	CASE NUMBER: XXCVXXXXXX (COPY FROM COMPLAINT)
DEFENDANT: YOUR NAME (EXACTLY HOW IT APPEARS ON THE COMPLAINT)	

5. e. ☒ Other (specify below or on form MC-025):
☐ All other requests are stated on form MC-025, titled as Attachment 5e.

Relief from forfeiture and all other relief that the court deems just and proper.

6. Number of pages attached: **1**

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.)

YOUR NAME

(TYPE OR PRINT NAME)

SIGNATURE

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

SIGNATURE

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

SIGNATURE

(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.

NOTE THAT YOU MUST SIGN ABOVE AND BELOW FOR THIS FORM TO BE ACCEPTED

Date: **DATE SIGNED**

YOUR NAME

(TYPE OR PRINT NAME)

SIGNATURE

(SIGNATURE OF DEFENDANT)

Date:

(TYPE OR PRINT NAME)

SIGNATURE

(SIGNATURE OF DEFENDANT)

Date:

(TYPE OR PRINT NAME)

SIGNATURE

(SIGNATURE OF DEFENDANT)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form

Save this form

Clear this form

SHORT TITLE: LANDLORD'S LAST NAME OR COMPANY v. YOUR LAST NAME (ABBREVIATE FROM COMPLAINT, e.g., "Smith v. Jones")	CASE NUMBER: XXCVXXXXXX (COPY FROM COMPLAINT)
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ATTACHMENT (Number): 3w

(This Attachment may be used with any Judicial Council form.)

(c) On [DATE], before the Notice to Pay or Quit expired, Defendant offered the rent due, but the Plaintiff would not accept it. The Notice to Pay or Quit was served on [DATE] expired on [DATE]. On [DATE], Defendant [DESCRIPTION OF PAYMENT ATTEMPT, e.g., "brought a cashier's check for the amount of rent due to the office located at 123 Main St and attempted to hand the check to Mary Manager. Mary Manager refused to accept the payment."]

(d) The Notice to Quit is fatally defective because it does not strictly comply with all applicable laws. [LIST ERRORS IN THE NOTICE OR HOW IT WAS SERVED; e.g., "The Notice to Pay or Quit was improperly served because it was not served according to the method specified in Defendant's lease. The Notice to Pay or Quit is defective because it demands rent that was due over one year ago."]

(e) Plaintiff is retaliating against Defendants because of Defendants' lawful and peaceable exercise of rights protected by law, including but not limited to [e.g., "requesting repairs"], all of which are protected by common law prohibitions against retaliation and Civil Code Sec. 1942.5. On [DATE], Defendant contact Plaintiff via [METHOD OF CONTACT] to report deplorable conditions and request repairs. The Defendant was current on rent. Defendant was served with the Three Day Notice to Pay Rent or Quit on [DATE].

(f) In allegedly serving the Notice to Quit and filing this Complaint, the Plaintiff is discriminating against the Defendant on account of the Defendant's [PROTECTED CHARACTERISTIC, i.e., race, color, religion, sex/gender, gender identity, gender expression, sexual orientation, marital status, medical condition, military or veteran status, national origin, ancestry, disability, genetic information, or age (over 40)].

(i) On [DATE] Plaintiff accepted [AMOUNT OF RENT PAID] rent from the Defendant, which covered a period of time after the date the Notice to Quit expired. The Plaintiff accepted rent through [DATE], and the Notice to Quit expired on [DATE]. By accepting rent after the expiration of the Notice to Quit, the Plaintiff waived the Notice to Quit.

(v) Frustration of Purpose. The only permitted use under the lease is [INSERT STATED PURPOSE LISTED IN THE LEASE]. During at least a portion of the time Plaintiff alleges breach, due to governmental shelter in place orders and other laws prohibiting all operation of these types of businesses, the purpose of the lease was completely frustrated, and while onerous restrictions were still in place the purpose was almost completely frustrated. These shutdowns were not the fault of Defendant, and were not foreseeable or controllable by the parties. Therefore, any lack of performance by Defendant should be either entirely or partially excused.

(v) Estoppel. Plaintiff has taken actions and made representations to Defendant that Defendant reasonably relied on, and should therefore be estopped from obtaining the relief they are requesting.

(v) Waiver. Plaintiff, by their actions, have waived their right to the relief they are requesting.

(v) Defendants' performance of the rental agreement is excused because of Plaintiff's breach of the agreement and failure to perform Plaintiff's obligations under the rental agreement.

(v) Plaintiff has breached the implied covenant of good faith and fair dealing.

(v) Plaintiff has unclean hands.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1

(Add pages as required)