

Common Questions

Please seek legal advice or refer to the appropriate California codes for the detailed procedures on the following commonly encountered situations.

- How does a landlord evict a tenant
- How is a restraining order obtained?
- How does a judgment creditor collect the judgment?
- What if a judgment creditor does not know the assets of the judgment debtor for levy purposes, (i.e., where the debtor works, banks, and so on)?
- What if you need legal papers served but do not have a service address?

Eviction Process through Superior Court - WHEN TENANTS ARE BEHIND IN THEIR RENT, THIS IS A GENERAL PROCEDURE TO FOLLOW.

1) How does a landlord evict a tenant?

A. Serve a three-day notice to pay rent or quit. At the same time, it is recommended to serve a thirty-day notice terminating tenancy, if you want them to leave even if the overdue rent is paid.

Service may be accomplished in any of the following manners:

- a.** Personally serve each tenant over the age of 18 years.
- b.** Post a notice for each tenant on the door of the property **and** send a copy certified mail to receive a signed proof of service.
- c.** Have the Sheriff's Office civil unit serve them for you and they will provide you with a proof of service. Cost is \$30.00 for each person served.

On the back of the original notice(s), write to whom served, when, where and mailing address if mailed. This will be needed in your Summons & Complaint package should you need to go to the next step (**B** below). You are required to do this only if someone other than the Sheriff's Office serves the notice for you.

B. If the tenants have not paid the rent nor moved within 3 days after service, on the fourth day go to the Superior Court having jurisdiction and file an unlawful detainer action (Summons & Complaint Unlawful Detainer). These forms are available at the court. These forms **MUST** be served personally on the tenants. The original notice and proofs of service from step **A** must be filed with the court.

Service may be accomplished in the following manners:

- a.** Any person over the age of 18 years and **NOT** a party to the action may serve the notice(s).
 - b.** Have the Sheriff's Office civil unit serve notice(s) for you. They will provide you with 2 proofs of service, one for you and one for you to forward to the court. Cost is \$30.00 for each person served.
 - c.** If the Tenants have not responded to the court within 5 days after service, return to the court and request a Writ of Possession. The Sheriff's Civil Unit **MUST** serve this paper. Cost is \$125.00
- 1.** Upon receipt of the Writ of Possession, the Sheriff's civil unit will lawfully serve the Writ. The defendants (tenants) will be given approximately 5 days to move from the premises. If they have not removed themselves from the premises, the Sheriff's civil unit will see to it that they are evicted on the 6th day.

When the Sheriff sets the date of the actual eviction, you will be notified of that time and date. You or your agent **MUST** be at the property location at the appointed date and time to take possession of the property.

The Sheriff does **NOT** remove tenant's personal property. If property is left in or around the premises, it is recommended that you seek counsel for your responsibilities regarding that property. It is the responsibility of the landlord to store property for at least 15 days. During this time, the tenant may claim the property and be charged reasonable storage by the landlord. At the end of the 15-day period, if no claim to the property has been made, the landlord must determine the resale value of the property. If the resale value is less than \$300, the landlord may dispose of it however they choose. If the resale value is \$300 or more, the landlord must conduct a public sale.

It is recommended that the locks be changed to prevent further entry by the defendants (tenants).

Note: This procedural guide is to assist you in understanding the eviction process. For a more in depth guide you may go to the web site at www.dca.ca.gov. If legal action is taken by the defendants (tenants) in response to your filings, you should seek legal counsel.

2) How is a restraining order obtained?

You may obtain the legal forms from the law library or receive help from a paralegal, legal aid or attorney. Once the documents are prepared, they will be submitted to the Court to either grant or deny the request for the restraining order. This office can serve the restraining order if the restrained party can be found in Monterey County. There may be a service fee involved.

3) How does a judgment creditor collect the judgment?

The most popular method of levy is a wage garnishment. The judgment creditor must provide the Sheriff with a *Writ of Execution*, a completed *Application for Earnings Withholding Order* (which this office provides), and the advance service fee. On the Application, the judgment creditor instructs the Sheriff to levy upon the debtor's wages, providing the employer's name and address.

Another method of levy is a bank garnishment. The judgment creditor must provide the Sheriff with the original and copies of the Writ of Execution, advance service fee and written instructions (instruction form obtained from this office). The written instructions will direct the Sheriff to levy upon the debtor's bank account, providing the bank name and address.

Other levies include rents, vehicles, businesses, and real and personal property. Contact this office for further details regarding these levies.

4) What if a judgment creditor does not know the assets of the judgment debtor for levy purposes, (i.e., where the debtor works, banks, and so on)?

The judgment creditor can go to the appropriate court clerk's office and request an *Order of Examination* to be issued. Small Claims Court will have a similar *Judgment Debtor's Statement of Assets* procedure to follow. Once an Order of Examination is served upon the debtor, it requires him/her to appear in court to answer questions regarding his/her assets. If the debtor fails to appear at the hearing after being personally served by the Sheriff or Registered Process Server, a Civil Bench Warrant can be issued for their arrest.

5) What if you need legal papers served but do not have a service address?

You must provide a physical address for service of documents. Depending upon the legal deadline for service, we will try as many times as possible to serve at a particular address, as long as we feel it is a valid address for the person to be served. Nighttime service is possible with the assistance of our patrol deputies working during those hours.