



FAIR HOUSING OF MARIN

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FREQUENTLY ASKED QUESTIONS: THE EVICTION PROCESS

What is an “unlawful detainer”?

An unlawful detainer action is the formal name for an eviction proceeding. If your landlord serves you with a 30, 60, or 90-Day Notice to Terminate Tenancy, or a 3-Day Notice to Quit but you remain in the property when the notice period expires, your landlord may file a court action against you.

When is an unlawful detainer illegal?

In California, it is illegal to evict a tenant in retaliation because that tenant exercised his or her legal rights. For example, it is illegal for a landlord to evict a tenant in retaliation for making a complaint to the Health Department or Building Inspector, or for filing a complaint of housing discrimination. In addition, it is illegal for a landlord to try to evict you by locking you out or cutting off your utilities.

What should I do if I am served with an unlawful detainer complaint?

Your landlord must file an unlawful detainer Complaint in Superior Court to start the eviction process. The Complaint states the facts that justify eviction, and asks the court to enter a judgment against you for unpaid rent as well as costs & fees. Along with the Complaint, your landlord must also serve you with a Summons. The Summons is a court notice that states your right to file a written response and explains where you should send your response.

You have **5 days** to respond to the Complaint. When counting days, include Saturday and Sunday. If the 5th day falls on either Saturday or Sunday, you may file a response on Monday. You can file either a Motion to Quash, a Demurrer, or an Answer. It is best to consult with an attorney or your local legal aid office to determine what responsive filing is most appropriate for your particular circumstances.

After you file an answer, the case is generally set for trial within **20 days**. You have the right to demand a jury trial rather than a trial before only a judge. If the judge or jury finds in your favor after the trial, your landlord may not evict you. However, if you lose at trial, your landlord will be entitled to regain possession of the premises. In some instances, you may be able to persuade the judge to grant you “relief from forfeiture” of your tenancy, or to postpone the eviction for a limited period of time.

If the judgment against you is final, your landlord will give a “writ of possession” to the sheriff’s department. A sheriff will then serve the notice on you, giving you **5 days** to vacate. If you have not moved by the end of the 5-day period, the sheriff will forcibly evict you.

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TDD: CALIFORNIA RELAY SERVICE FOR THE HEARING OR SPEECH IMPAIRED: (800) 735-2922
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What should I do if I believe the reason my landlord is evicting me is based on discrimination?

If you believe your landlord is wrongfully trying to evict you based on discrimination against you because of your race, color, national origin, sex, religion, familial status, disability, sexual orientation, marital status, ancestry, age, or source of income, or in retaliation for exercising your right to be free from discrimination based on race, color, national origin, sex, religion, familial status, disability, sexual orientation, marital status, ancestry, age, or source of income, please contact Fair Housing of Marin at (415) 457-5025 for more information on housing discrimination.

Can Fair Housing of Marin represent me in an eviction trial?

No. Fair Housing of Marin does not represent tenants in unlawful detainer trials. Contact your local legal aid office for referrals to attorneys who may be able to represent you.

Where can I find out more information?

Contact your local legal aid office or a private attorney, and check out *California Tenant's Rights* by Nolo Press

Disclaimer: The opinions expressed in the above are those of Fair Housing of Marin, and do not constitute legal advice. The information is general in nature. No attorney-client relationship exists between yourself and Fair Housing of Marin. Consult with a licensed attorney for specific advice.