

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W20-03

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| Title Unlawful Detainer: Complaint and Answer Forms | Action Requested Review and submit comments by February 11, 2020 |
| Proposed Rules, Forms, Standards, or Statutes Revise forms UD-100 and UD-105 | Proposed Effective Date September 1, 2020 |
| Proposed by Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair | Contact Anne M. Ronan 415-865-8933, anne.ronan@jud.ca.gov |

Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes revising the Judicial Council unlawful detainer complaint and answer forms to reflect the changes in landlord-tenant law enacted in Assembly Bill 1482, the Tenant Protection Act of 2019.

The Proposal

Assembly Bill 1482¹ adds several new sections to the Civil Code, one to place restrictions on terminations of tenancies (§ 1946.2²) and two relating to caps on rent increases over a 12-month period (§§ 1947.12 and 1947.13). The new laws go into effect January 1, 2020, and will remain in effect until January 1, 2030. Because the new statutory provisions place new requirements on landlords in relation to termination of tenancies, the committee is proposing revisions to the unlawful detainer (UD) complaint form and answer form.

Complaint—Unlawful Detainer (form UD-100)

The UD complaint form was last revised 15 years ago, to incorporate amendments to Code of Civil Procedure section 1166 requiring that certain documents be attached to an unlawful detainer complaint: a copy of the rental agreement, if available; a copy of the notice of termination of tenancy; and a proof of service of that notice.

¹ A copy of the bill may be viewed online at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1482.

² Unless otherwise noted, all statutory references in this document are to the Civil Code.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

New section 1946.2 places further requirements on landlords relating to terminations of tenancies: they may only terminate tenants who have been in residence for 12 months or longer with just cause, which must be stated in the notice terminating the tenancy. (§ 1946.2(a).) If the just cause is a curable lease violation, the landlord must issue an initial notice of termination with an opportunity to cure under Code of Civil Procedure section 1161, paragraph 3, and, if that period passes without a cure, then issue a second termination notice. (§ 1946.2(c).) When no-fault just cause applies, the landlord must provide relocation assistance in the form of either a credit for the last month's rent or a direct payment to the tenant in that amount. (§ 1946.2(d)(1).) If the landlord does not comply with this section, the notice of termination is void. If the landlord complies, but the tenant fails to vacate after expiration of the notice to terminate, the amount of relocation paid or credited to the tenant is recoverable as damages in the UD action. (§ 1946.2(d).)

The proposed revised *Complaint—Unlawful Detainer* (form UD-100) adds new items 7 and 8 to reflect the requirements described above.

- Item 7 specifies whether the tenancy at issue in the complaint is subject to the new law. The new law only applies when tenants have been in the property for certain periods of time (see § 1946.2(a)(1) and (2)), and many properties are exempt (see § 1946.2(e)).
- Item 8, to be completed only if the property is subject to the new law, attests to the just cause for the termination and identifies whether it was at-fault just cause or no-fault just cause. If the latter, then the plaintiff must identify which form of the required relocation assistance was paid and the amount. Item 8c allows the plaintiff to claim the relocations assistance as damages.³

Item 9 (which is in current *Complaint—Unlawful Detainer* form as item 7) has also been revised. This item addresses the service of notices of termination: the plaintiff must identify which type of notice was given from a list provided, state the date the period in the notice ended, assert that the facts in the notice are true, and provide that a copy of the notice is attached. This item has been revised to attempt to reflect the new provisions regarding the notice required in curable at-fault situations. (See new § 1946.2(c).) That section now requires that when the termination is based on “a curable lease violation,” a landlord must serve two three-day notices to quit:

- (1) A three-day notice under Code of Civil Procedure section 1161, paragraph 3 (a notice to terminate that includes the options of either curing the violation of certain covenants and conditions in the lease or giving up possession of the property); and

³ A new item has also been added to item 19, to include recovery of the relocation assistance in the prayer at the end of the complaint.

- (2) If the asserted violations are not cured, another three-day notice to terminate, this time without the option to cure.

Item 9 has been revised to attempt to reflect this double-notice provision. The list of potential notices now includes a notice to quit under Civil Code section 1946.2(c) and requires that a date for the prior required notice under such section also be stated. (See item 9(a)(6).) The instructions in item 9(e) to provide a copy of the termination notice have been revised to require a copy of both notices if required. And the instruction in item 9(f) to complete attachments showing the service of notices not otherwise described in 9 has been expanded to include the prior required notice under section 1946.2(c). Commenters are asked to consider these revisions in particular and provide comments as to whether they are appropriate. (See further discussion below in Alternatives Considered section.)

Answer—Unlawful Detainer (form UD-105)

It is clear from the language of new section 1946.2(a) that lack of just cause is sufficient to block termination of a tenancy in cases where the tenants have been on the property a sufficient period of time and the real property is not exempt from the statute, and can be asserted as an affirmative defense to an unlawful detainer action. While it is not as clear that a violation of the new rent control provisions in section 1947.12, would block termination, it appears that it would at least do so under certain circumstances.⁴ In light of this, the committee is proposing that the answer form should be revised to include as a new affirmative defense the failure to comply with the new eviction requirements or with the new rent control requirements. See *Answer—Unlawful Detainer* (form UD-105), at new item 3h. The language mirrors that already on the form (at item 3g) for violation of local rent control and eviction control ordinances.

Alternatives Considered

The committee found the new double-notice requirement in certain circumstances under new section 1946.2(c), at best, ambiguous, because *both* of the notices that the landlord is required to serve on the tenant with a curable lease violation will require that the tenant has three days to quit the property. The first (the Code of Civil Procedure section 1161 notice) will include the option of curing the violations rather than leaving, but will also include the requirement that the tenant must give up possession of the property at the end of the three days if the violations are not cured. The second notice will also require the tenant to leave in three days, but at the end of a different three-day period. Because by law, a tenant is in unlawful detainer at the end of the three-day period provided in the Code of Civil Procedure section 1161 notice if still in possession of the property without having cured, and because nothing in the new statute—which expressly invokes Code of Civil Procedure section 1161—exempts the tenants from that status, it is unclear whether a landlord may start eviction procedures (file an unlawful detainer) at the end of the section 1161 notice period.

⁴ For example, if a landlord raises rent by 12 percent, when the maximum permitted on a particular property under this new law was 10%, and the tenant fails to pay the extra 2%, the tenant may have an affirmative defense to an eviction for failure to pay rent on the grounds that the rent increase violated section 1947.12.

The proposed forms have been revised in such a way that they may be used assuming that the landlord serves the second notice provided for in section 1946.2(c) to terminate before filing the unlawful detainer action. The committee acknowledges that this revision makes the form, already complex, even more complicated to follow.

Alternatives considered by the committee included:

- Annotating the form (which is optional) to preclude its use in cases involving curable lease violations covered by the double-notice requirement of section 1946.2(c);
- Creating a new complaint form to be used for unlawful detainers for tenancies subject to the double notice, with separate items regarding service (items 9 and 10 on the proposed form UD-100) for each of the notices; and
- Creating a new complaint form for unlawful detainers for all tenancies subject to this new law, without any revisions to the current form UD-100.

In light of the ambiguity of the statute, it is not clear that a new form would address the issues raised by the double-notice provision, and the committee decided to circulate the revised form UD-100 attached here. Specific comments are requested on whether an alternative should be developed and, if so, what it should be.

Fiscal and Operational Impacts

While there will need to be training for judicial officers and court legal services and self-help offices on the new statutory requirements, the revisions to the forms should not themselves have fiscal or operational impacts on the courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Do the proposed revisions to item 9 in the revised complaint form appropriately reflect the double notice requirements in new Civil Code section 1946.2(c)?
- Should a separate complaint form be developed, either for cases involving the double - notice provisions or for all cases subject to the just cause termination provisions of Civil Code section 1946.2?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Forms UD-100 and UD-105, at pages 6–12
2. Link A: AB 1482, at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1482

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| PLAINTIFF: DEFENDANT: | CASE NUMBER: |
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6. c. The defendants not named in item 6a are
- (1) subtenants.
- (2) assignees.
- (3) other (*specify*):
- d. The agreement was later changed as follows (*specify*):
- e. A copy of the written agreement, including any addenda or attachments that form the basis of this complaint, is attached and labeled Exhibit 1. (*Required for residential property, unless item 6f is checked. See Code Civ. Proc., § 1166.*)
- f. (*For residential property*) A copy of the written agreement is **not** attached because (*specify reason*):
- (1) *the written agreement is not in the possession of the landlord or the landlord's employees or agents.*
- (2) *this action is solely for nonpayment of rent (Code Civ. Proc., § 1161(2)).*
7. The tenancy described in 6 (*complete (a) or (b)*):
- a. is **not** subject to the Tenant Protection Act of 2019 (Civil Code, § 1946.2).
- b. is subject to the Tenant Protection Act of 2019 (Civil Code, § 1946.2).
8. (*Complete only if item 7b is checked. Check all applicable boxes.*)
- a. The tenancy was terminated for at-fault just cause (Civil Code, § 1946.2(b)(1)).
- b. The tenancy was terminated for no-fault just cause (Civil Code, § 1946.2(b)(2) and the plaintiff (*check one*):
- (1) waived the payment of rent for the final month of the tenancy, prior to the rent coming due, pursuant to section 1946.2(d)(2), in the amount of \$ _____.
- (2) provided a direct payment of one month's rent under section 1946.2(d)(3), equaling \$ _____ to (*name each defendant and amount given to each*): _____.
- c. Because defendant failed to vacate, plaintiff is seeking to recover the total amount in 8b as damages in this action.
9. a. Defendant (*name each*) was served the following notice on the same date and in the same manner:
- (1) 3-day notice to pay rent or quit (5) 3-day notice to quit
- (2) 30-day notice to quit (6) 3-day notice to quit under Civil Code, § 1946.2(c).
Prior required notice served (*date*): _____.
- (3) 60-day notice to quit
- (4) 3-day notice to perform covenants or quit (7) other (*specify*): _____
- b. (1) On (*date*): _____ the period stated in the notice expired at the end of the day.
- (2) Defendants failed to comply with the requirements of the notice by that date.
- c. All facts stated in the notice are true.
- d. The notice included an election of forfeiture.
- e. A copy of the notice is attached and labeled Exhibit 2. (*Required for residential property. See Code Civ. Proc., § 1166. If two notices are required under Civil Code, § 1946.2(c), provide copies of both.*)
- f. One or more defendants were served (1) with the prior required notice under Civil Code, § 1946.2(c), (2) with a different notice, (3) on a different date, or (4) in a different manner, as stated in Attachment 10c. (*Check item 10c and attach a statement providing the information required by items 9a–e and 10 for each defendant and notice.*)

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| PLAINTIFF: DEFENDANT: | CASE NUMBER: |
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10. a. The notice in item 9a was served on the defendant named in item 9a as follows:
- (1) by personally handing a copy to defendant on *(date)*:
- (2) by leaving a copy with *(name or description)*:
a person of suitable age and discretion, on *(date)*: _____ at defendant's
 residence business AND mailing a copy to defendant at defendant's place of residence
on *(date)*: _____ because defendant cannot be found at defendant's residence or usual place of business.
- (3) by posting a copy on the premises on *(date)*:
 AND giving a copy to a person found residing at the premises AND mailing a copy to defendant at the premises
on *(date)*:
(a) because defendant's residence and usual place of business cannot be ascertained OR
(b) because no person of suitable age or discretion can be found there.
- (4) *(Not for 3-day notice; see Civil Code, § 1946 before using)* by sending a copy by certified or registered mail
addressed to defendant on *(date)*:
- (5) *(Not for residential tenancies; see Civil Code, § 1953 before using)* in the manner specified in a written commercial
lease between the parties.
- b. *(Name)*: _____
was served on behalf of all defendants who signed a joint written rental agreement.
- c. *Information about service of notice on the defendants alleged in item 9f is stated in Attachment 10c.*
- d. *Proof of service of the notice in item 9a is attached and labeled Exhibit 3.*
11. *Plaintiff demands possession from each defendant because of expiration of a fixed-term lease.*
12. *At the time the 3-day notice to pay rent or quit was served, the amount of **rent due** was \$ _____*
13. *The fair rental value of the premises is \$ _____ per day.*
14. *Defendant's continued possession is malicious, and plaintiff is entitled to statutory damages under Code of Civil Procedure
section 1174(b). (State specific facts supporting a claim up to \$600 in Attachment 14.)*
15. *A written agreement between the parties provides for attorney fees.*
16. *Defendant's tenancy is subject to the local rent control or eviction control ordinance of (city or county, title of ordinance, and
date of passage): _____*

Plaintiff has met all applicable requirements of the ordinances.

17. *Other allegations are stated in Attachment 17.*
18. Plaintiff accepts the jurisdictional limit, if any, of the court.
19. **PLAINTIFF REQUESTS**
- a. possession of the premises.
- b. costs incurred in this proceeding:
- c. past-due rent of \$ _____
- d. reasonable attorney fees.
- e. forfeiture of the agreement.
- f. *damages in the amount of waived rent or relocation assistance
as stated in item 8: \$ _____*
- g. damages at the rate stated in item 13 from
date: _____
for each day that defendants remain in possession through entry of judgment.
- h. statutory damages up to \$600 for the conduct alleged in item 14.
- i. other *(specify)*: _____

20. Number of pages attached *(specify)*: _____

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| PLAINTIFF: DEFENDANT: | CASE NUMBER: |
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UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400–6415)

21. (Complete in all cases.) An unlawful detainer assistant did **not** did for compensation give advice or assistance with this form. (If declarant has received **any** help or advice for pay from an unlawful detainer assistant, complete a–f.)

- | | |
|--|--------------------------------------|
| a. Assistant's name: _____ | c. Telephone no.: (____) ____ - ____ |
| b. Street address, city, and zip code: _____ | d. County of registration: _____ |
| _____ | e. Registration no.: _____ |
| | f. Expires on (date): _____ |

On or about (date):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

| | | |
|----------------------|---|--------------------------------------|
| _____ | ▶ | _____ |
| (TYPE OR PRINT NAME) | | (SIGNATURE OF PLAINTIFF OR ATTORNEY) |

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

| | | |
|----------------------|---|--------------------------|
| _____ | ▶ | _____ |
| (TYPE OR PRINT NAME) | | (SIGNATURE OF PLAINTIFF) |

| | |
|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | FOR COURT USE ONLY DRAFT 10-26-19 Not approved by the Judicial Council |
| Plaintiff: Defendant: | |
| ANSWER—UNLAWFUL DETAINER | CASE NUMBER: |

1. Defendant (each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs):

answers the complaint as follows:

2. **Check ONLY ONE of the next two boxes:**

- a. Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000.)
- b. Defendant admits that all of the statements of the complaint are true EXCEPT
- (1) defendant claims the following statements of the complaint are false (state paragraph numbers from the complaint or explain below or on form MC-025): Explanation is on MC-025, titled as Attachment 2b(1).
- (2) defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (state paragraph numbers from the complaint or explain below or on form MC-025): Explanation is on MC-025, titled as Attachment 2b(2).

3. AFFIRMATIVE DEFENSES (**NOTE:** For each box checked, you must state brief facts to support it in item 3l (page 2).)

- 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): 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.
- 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):
(Also, briefly state in item 3m the facts showing violation of the ordinance.)
- h. Plaintiff's demand for provision violates the Tenant Protection Act, Civil Code section 1946.2 or 1947.12. (briefly state in item 3m the facts showing violation of the statute.)
- i. Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.

CASE NUMBER:

3. AFFIRMATIVE DEFENSES (cont'd.)

- 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. Other affirmative defenses are stated in item 3m.
- m. Facts supporting affirmative defenses checked above *(identify facts for each item by its letter below or on form MC-025)*:
- Description of facts is on MC-025, titled as Attachment 3m.

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 on form MC-025)*:
 Explanation is on MC-025, titled as Attachment 4b.
- c. Other *(specify below or on form MC-025 in attachment)*:
 Other statements are on 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.
- e. Other *(specify below or on form MC-025)*:
 All other requests are stated on MC-025, titled as Attachment 5e.

CASE NUMBER: _____

6. Number of pages attached: _____

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 his or her attorney signs.)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____
(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. Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF DEFENDANT)