



INSTRUCTIONS FOR LANDLORDS - SERVING LEGAL NOTICE ON TENANTS

THREE DAY NOTICES

A Three-Day Notice is used when the tenant is in default under the terms of the Lease. The most common default of the tenant is failure to pay rent, but other defaults include subletting of the premises and wrongful use of the premises.

The law requires that the tenant be served with a Three- Day Notice when in default of the lease. In this way, the tenant has three days, not counting the day of service of the Three-Day Notice, to cure the breach. If the tenant cures the breach, the tenant is again in lawful possession of the premises. If the tenant fails to cure the breach, the tenant is in unlawful possession of the premises, and an unlawful detainer proceeding can be filed against the tenant for eviction.

If a tenant is in default of the rent, you should serve the tenant with a Three-Day Notice to Pay Rent or Quit. The instructions for filling out the Three-Day Notice and serving it are set out under the section entitled “Service of Three Day-Day Notices.”

(A) **PRECISE AMOUNT OF RENT DUE**

A common defect of the Three-Day Notice to Quit is erroneous designation of the *exact amount of rent due*. The notice must state “the amount that is due.” A Three-Day Notice that demands rent in excess of the exact amount due is invalid.

If the amount demanded in the notice exceeds a judgment later entered on it, the notice is insufficient to support the judgment for rent. A demand for a sum less than the precise amount due will not invalidate the notice.

(B) **EFFECT OF TENDER OF RENT DURING THE NOTICE PERIOD**

Tender of rent and its acceptance by the landlord within the Three-Day Notice period cures the default and extinguishes the rental obligation. The tenant’s performance within the Three-Day period also nullifies any declaration of forfeiture in the notice. The obligation is not extinguished merely by the tenant’s tendering the rent or depositing the money in a bank. To extinguish the obligation, the tenant must pay the amount due, or deposit it in a bank account in the landlord’s name and give the landlord notice of the deposit. Payment of rent demanded in a Three-Day Notice within the three days nullifies any declaration of forfeiture in the notice.

Although the general rule is that a creditor can refuse a tender made by check rather than in cash, if the mode of payment during the Lease has been by check, then a tender by check is proper unless the tenant has been notified otherwise.

If a tenant has breached a provision of the lease other than failure to pay rent, you should notify your attorney.

THIRTY OR SIXTY DAY NOTICES

A Thirty-Day or Sixty-Day Notice is used when the tenant is not in default of the lease. A Thirty-Day Notice is used in two situations:

1. When the tenancy is to be terminated; or
2. When the rent is to be increased.

You should always consult with your attorney before serving any such notice to make sure that it complies with the law.

SERVICE OF THREE-DAY NOTICES

When a tenant is in default of his rent, or when you are notified that the tenant is in breach of another provision of the lease, you should serve a Three-Day Notice as follows:

A. **FILL OUT THE THREE-DAY NOTICE.**

1. If The Tenant Has Not Paid The Rent:

Fill out the Three-Day Notice following the example on the page entitled “Three-Day Notice To Pay Rent Or Quit (Code of Civil Procedure Section 11610.)” Remember, that for nonpayment of rent, the notice must also include information on how and to whom the back-due rent may be paid.

2. If the Tenant Breach A Provision of the Lease:

For example, the tenant may have sub-let the premises to another individual without written approval of the landlord, or may have unauthorized pets on the premises, in violation of the lease. In these cases, you should fill out a Three-Day Notice to Perform covenant or Quit, following the example on the page entitled, Three- Day Notice to Perform Covenant Or Quit.”

In extreme cases when a tenant has violated a provision of his lease and the violation cannot be cured, a Three-Day Notice To Quit For Breach of Covenant should be used, following the example on the page entitled, “Three-Day Notice To Quit for Breach of Covenant.”

3. **REMEMBER** that you must serve each tenant who has signed the rental agreement. For example, if a husband and wife have both signed the rental agreement, it is necessary that both of them be served with a copy of the Three-Day Notice. It is not necessary that they be served with a copy of the Three-Day Notice at the same time.

Fill out three (3) copies of the required Three-Day Notice. Be sure to sign each copy.

B. **SERVE THE THREE-DAY NOTICE**

1. After the Three-Day Notice has been filled out and signed, you must serve it on the tenant. The Three-Day Notice may be served either:

(a) By delivering a copy to the tenant personally, or

(b) If the tenant is absent from is place of residence and from his

usual place of business, by leaving a copy with some person over the age of eighteen (18) years at either place, **AND** mailing a copy of the Three-Day Notice addressed to the tenant, postage prepaid, first-class mail, to his place of residence; or

(c) If such place of residence and business cannot be ascertained and a person over the age of eighteen cannot be found at the tenant's residence, then by affixing a copy of the Three-Day Notice in a conspicuous place on the property, **AND** mailing a copy of the Three Day Notice to the tenant at his residence.

2. You should serve the Three-Day Notice personally or by a process server.

ALWAYS FIRST, TRY TO SERVE THE TENANT PERSONALLY. This can be done at his or her residence, business or wherever you find him or her.

If you cannot serve the tenant personally, then attempt to leave a copy of the Three-Day Notice with some person over the age of eighteen at the tenant's residence or business AND mail a copy of the Three-Day Notice to the tenant at his residence, immediately.

If you cannot find the tenant to serve him personally, and you cannot find someone over the age of eighteen to serve on behalf of the tenant, then you should post the copy in a conspicuous place on the property, AND immediately mail a copy of the Three-Day Notice to the tenant at his residence.

Although it is necessary to serve each tenant who has signed the rental agreement, it is not necessary to serve each tenant in the same manner. For example, if the husband and wife have signed the rental agreement, you can personally serve the wife, and serve the husband by levying a copy of the Three-Day Notice with the wife. You also must mail a copy of the ThreeDay Notice to the husband at his residence immediately.

C. FILL OUT THE PROOF OF SERVICE

After the tenant has been served by one of the three methods enumerated above, you must fill out a proof of service. The poof of service shows that the tenant was properly served. Remember that a Proof of Service must be filled out for each tenant who has been served. If an unlawful detainer action is filed, your proof of service will be attached to the complaint.

Remember, if you do not serve the tenant personally by handing him a copy of the ThreeDay Notice, you must mail a copy of the Three-Day Notice to the tenant at his residence in addition to giving a copy of the Three-Day Notice to a member of the tenant's household, or posting a copy on the premises.

D. WHEN TO SEND THE DOCUMENTS.

1. Three-Day Notice For Failure To Pay Rent

If you have served the tenant with a Three-Day Notice because the tenant has failed to pay the rent, wait for three (3) days after service **not counting the day of service**, to see if the tenant pays the rent. If the tenant pays the rent, take no further action. If after the three days the tenant has not paid the rent, you should contact your attorney regarding evicting the tenant.

2. If you have served a Three-Day Notice on a tenant because of a breach of covenant of the lease other than failure to pay the rent, after serving the Three-Day Notice on the tenant, immediately send a copy of the Three-Day Notice for Breach of Covenant and a copy of the Proof of Service to your attorney.

If you have any questions about these instructions or the use of the Notices, you should contact your attorney for advice, as it is important to use the proper notices and forms to comply strictly with all statutory requirements for eviction.

DISPOSITION OF TENANT'S PERSONAL PROPERTY AFTER UNLAWFUL DETAINER OR ABANDONMENT

When your tenants leaves personal property on your premises after the tenancy is terminated, or your tenant otherwise vacates the premises, you, as the landlord must comply with statutory procedural requirements in disposing of the property. You may be liable for damages if you enter the premises wrongfully and hold your tenant's personal property or enter the premises lawfully but take possession of the tenant's property wrongfully.

When your tenant leaves personal property on your premises after the tenancy has been terminated (i.e., by vacating after service of a notice to quit, after entry of an unlawful detainer judgment, or after actual eviction by the sheriff under a writ), you must dispose of it as either lost property or as abandoned property. If you believe the property is lost, you must deliver it to the local police or sheriff. If the appropriate authorities refuse to accept the property as lost, you may proceed with the statutory procedures for disposing of abandoned property.

In handling your former tenant's property as abandoned property, the first step is for you to store it in a safe place. The storage place may be on the premises. If space is not available on your premises, you should place the property under lock and key in a suitable safe location. To avoid later disputes, you should make an inventory of your former tenant's property, witnessed by an impartial person. I would further recommend that you photograph the property, and, if possible, video tape the contents also. This may prevent a later specious claim by your former tenant as to the condition and value of his property.

In cases of abandonment of the premises, you must notify your former tenant, and any other person that you reasonably believe to be the owner of the property, that property has been left on the premises. The notification must describe the property, and specify that it must be claimed within fifteen days of personal delivery of the notice or within eighteen days of mailing, or the property may be sold at public auction. When the tenancy has been terminated by an unlawful detainer action, the writ of possession gives the tenant notice covering the personal property, and you need not give your former tenant any additional notice.

During the 15 or 18-day period, you may return the property to your former tenant or other owner, and require payment of reasonable storage costs as a condition to its release. You may not require that your former tenant pay any money judgment that has been entered as a condition to return of the tenant's property. If the property is returned to the tenant, you are not liable to any other person who may claim a right to it.

If the property is not claimed and released within the 15-day period, you may dispose of it at public auction if it is worth more than \$700.00.

If you reasonably believe that the unreleased property is worth less than \$300.00, you may simply retain it or dispose of it in any manner. Otherwise, the property must be sold by competitive bidding at public auction.

CAVEAT!

The information contained in these instructions should not be acted on without first consulting with your attorney. These instructions are not meant to be an exhaustive study on the law of landlord-tenant notices. Rather, its purpose is to make you more informed.

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LANDLORD-TENANT FORMS

Form: 3-Day Notice to Pay Rent or Quit

NOTICE TO PAY RENT OR QUIT

To __ *[name of Tenant]* __, tenant in possession of premises located at __ *[specify address or other identifying information]* __.

Within three (3) days after service of this notice, you are required to pay the rent now due and unpaid on the premises at __ *[address]* __, a total of \$ __ *[amount]* __, representing rent due for the month(s) of __ *[specify month(s) and year and itemize rent due]* __, or to deliver possession of the premises to the undersigned __ *[landlord/landlord's authorized agent]* __. Payment of rent shall be made to __ *[specify name, telephone number, and physical address of person to whom rent payment shall be made and, if payment may be made personally, the usual days and hours that person will be available to receive payment; see §8.48]* __. __ *[Payment shall be made by any one of the following methods: Personal Check /Cash / Cashier's Check /or Money Order. Alternatively, payment may be made either (1) by directly depositing it into account number __ [specify number] __ at __ [specify name and address of financial institution located within 5 miles of rental property] __, or (2) by the electronic funds transfer procedure that has previously been established for payment of rent by you for the premises.*

Your failure to pay the amount demanded, or to deliver possession of the premises within three (3) days, will cause the undersigned to initiate legal proceedings against you __ *[to declare a forfeiture of your __ [lease/rental agreement] __]* __, to recover possession of the premises, and to seek a money judgment for the rent owed through the expiration date of this notice, with damages for each day of occupancy after that date. Such a judgment against you may include attorney fees and court costs as allowed by law or contract, and a punitive damages award of \$600 in accordance with California law. If you fail to fulfill the terms of your credit obligations, a negative credit report may be submitted to a credit reporting agency. This Notice to Pay Rent or Quit supersedes all previous Notices to Pay Rent or Quit, if any.

You are further notified that the undersigned elects to declare the forfeiture of the __[lease/rental agreement]__ under which you hold possession of the premises, if you fail to pay the amount of rent demanded above.

[Continue]

Date: _ _ _ _ _

__ [Signature of landlord] __

__ [Typed name of landlord] __

Form: 30-Day or 60-Day Termination Notice

TERMINATION NOTICE

To __[*name of tenant*]__, tenant in possession of premises located at __[*specify address or other identifying information*]__:

Within __[*30 or 60*]__ days after service of this notice, you must surrender possession of the premises to the undersigned __[*landlord/landlord's authorized agent*]__. Your failure to vacate the premises within __[*30 or 60*]__ days will cause the undersigned to initiate legal proceedings against you to recover possession of the premises and to seek a money judgment for damages for each day of occupancy after the expiration date of this notice. Such a judgment against you may include attorney fees and court costs as allowed by law or contract, and an additional punitive damages award of six hundred dollars (\$600) in accordance with California law. If you fail to fulfill the terms of your credit obligations, a negative credit report may be submitted to a credit reporting agency. This notice supersedes all previous termination notices, if any, given to you.

This notice is intended as a __[*30 or 60*]__-day notice terminating your __[*e.g., month-to-month*]__ tenancy. Prorated rent totaling \$ __[*amount*]__ is due and payable through and including the date of termination of your tenancy under this notice.

[If applicable, add one or more of the following options]

[Option 1: Reason for termination]

The reason for service of this notice and termination of your tenancy is:
__[*specify*]__.

[Option 2: Notice of right to inspection (residential tenancy only; use if landlord holds security deposit requiring tenant to leave premises in same condition as at inception of lease;]

Under California law, you have a right to request that the undersigned __[*landlord/landlord's authorized agent*]__ make an initial inspection of the premises to determine its condition before you vacate, and you have the right to be

present during the inspection. The purpose of the inspection is to allow you an opportunity to remedy identified deficiencies or damage to the premises, if any, caused by you. If you wish to have such an inspection, please contact the undersigned __ *[landlord/landlord's authorized agent]* __ as soon as possible at __ *[specify address & telephone number]* __. If you request an inspection, you will be given 48 hours' advance notice of the inspection, but you may waive in writing the required 48 hours' notice and have the inspection done sooner.

[Option 3: Notice of right to reclaim abandoned personal property (commercial and residential tenancies)]

State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out.

[Continue]

Date: _ _ _ _ _

__ *[Signature of
landlord/landlord's agent]* __

__ *[Typed name of
landlord/landlord's agent]* __

NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY

To ___[name of former tenant]__ __, ___[address]__ __:

When you vacated the premises at ___[address of premises, including room or apartment number if any]__ __, the following personal property remained: ___[Describe personal property]__ __.

You may claim this property at ___[address where property may be claimed]__ __.

Unless you pay the reasonable cost of storage for all the above-described property, and take possession of the property which you claim, not later than ___[Specify date not less than 15 days after notice is personally delivered or, if mailed, not less than 18 days after notice is deposited in the mail]__ __, this property may be disposed of pursuant to Civil Code §1988.

If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the cost of storage, advertising, and sale is deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within one (1) year after the county receives the money.

Date: _____ __[Signature of landlord]__

___[Typed name of landlord]__ __

___[Address, telephone]__ __

ALTERNATIVE: PROPERTY BELIEVED TO BE WORTH LESS THAN \$700.00

NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY

To __ __[name of former tenant]__ __, __ __[address]__ __:

When you vacated the premises at __ __[address of premises, including room or apartment number if any]__ __, the following personal property remained: __ __[Describe personal property]__ __.

You may claim this property at __ __[address where property may be claimed]__ __.

Unless you pay the reasonable cost of storage for all the above-described property, and take possession of the property which you claim, not later than __ __[Specify date not less than 15 days after notice is personally delivered or, if mailed, not less than 18 days after notice is deposited in the mail]__ __, this property may be disposed of pursuant to Civil Code §1988.

Because this property is believed to be worth less than \$700.00, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated.

Date: _____
__ __[Signature of landlord]__ __

__ __[Typed name of landlord]__ __

__ __[Address, telephone]__ __

AGREEMENT TO VACATE PREMISES

Dear

You owe back rent through _____, 201_ in the sum of \$ _____. If you vacate the premises at _____ CA 9_ by _____
_____ p.m.

I will forgive all back rent and give you a check for \$ _____, payable to you.

However, all of the following conditions must be met:

- I will make an inspection of the premises BEFORE I giving you the check;
- I will walk through the premises with you; if there are no damages to the premises, other than ordinary wear and tear, then I will accept the premises in that condition;
- Everyone must be out of the premises; if anyone still remains on the premises, then you have not vacated.
- Simultaneously with giving you the check, you will give your keys to the premises.
- Any property remaining in the premises will be deemed abandoned by you and will then be owned by me. I may retain it or dispose of it in any manner. You will not be allowed again into the premises to get any property you have left in the premises once you have accepted the check and returned the keys.

Very truly yours,

_____ Accepted:

Dated:

DECLARATION OF SERVICE OF NOTICE

Name of Renter(s): _____

Name of person served (if other than renter): _____

Place of service: _____

Date and Time of service: _____

I declare that:

I served a copy of the _____ on the renter(s) named above by:

(Check applicable statement)

___ Delivering it personally to one or more of the renter(s) named above.

(IF UNABLE TO SERVE THE RENTER(S) PERSONALLY AFTER MAKING A DILIGENT EFFORT TO DO SO, INCLUDING AT LEAST THREE (3) ATTEMPTS AT DIFFERENT TIMES OR ON DIFFERENT DAYS AT THE PREMISES OR, IF KNOWN, AT THE RENTER(S) PLACE OF BUSINESS.)

___ Leaving a copy with the person named above, who is of suitable age and discretion, at the renter(s) premises/ business and by sending a copy in a sealed envelope, by first class mail, postage prepaid, addressed to the renter(s) at the premises.

___ Affixing a copy to the front door of the premises and by sending a copy in a sealed envelope by first class mail, postage prepaid, addressed to the renter(s) at the premises, in as much as the renter(s) actual place of residence or business cannot be ascertained and/or a person of suitable age and discretion cannot be found at the renter(s) premises or business.

___ I am personally aware of these facts and I am competent to testify thereto as a witness. I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on the following date and the following place:

DATE: _____

PLACE: _____, California.

DECLARANT