



APPENDIX 1 – OCCUPANTS NOT NAMED IN EVICTION LAWSUIT OR WRIT OF POSSESSION

OCCUPANTS NOT NAMED IN EVICTION LAWSUIT

People who are not named as tenants in the rental agreement sometimes move into a rental unit before the landlord files the unlawful detainer (eviction) lawsuit. The landlord may not know that these people (called “occupants”) are living in the rental unit, and therefore may not name them as defendants in the summons and complaint. As a result, these occupants are not named in the writ of possession if the landlord wins the unlawful detainer action. A sheriff enforcing the writ of possession cannot lawfully evict an occupant whose name does not appear on the writ of possession and who claims to have lived in the unit since before the unlawful detainer lawsuit was filed, if the occupant takes the correct steps in time (see writ of possession).

The landlord can take steps to avoid this result. The landlord can instruct the marshal, sheriff or registered process server who serves the summons and complaint on the named defendants to ask whether there are other occupants living in the unit who have not been named as defendants. If there are, the person serving the summons and complaint can serve each of the so-called “unnamed occupants” with a blank Prejudgment Claim of Right to Possession form and an extra copy of the summons and complaint.⁴⁶¹

These occupants then have 10 days from the date they are served to file a Prejudgment Claim of Right to Possession form with the Clerk of Court, and to pay the clerk the required filing fee (or file an **Application for Waiver of Court Fees and Costs** if they are unable to pay the filing fee). Any unnamed occupant who does not file a Prejudgment Claim of Right to Possession form with the Clerk of Court (along with the filing fee or a request for waiver of the fee) can then be evicted if the tenants named in the eviction action lose at court.

An unnamed occupant who files a Prejudgment Claim of Right to Possession form automatically becomes a defendant in the unlawful detainer lawsuit, and must file an answer to the complaint within five days after filing the form.⁴⁶² If the landlord wins, the occupant will be subject to the eviction. Any other occupant who did not file a Prejudgment Claim cannot delay the eviction, whether or not that occupant is named in the writ of possession issued by the court.⁴⁶³

OCCUPANTS NOT NAMED IN WRIT OF POSSESSION

The landlord sometimes does not serve a Prejudgment Claim of Right to Possession form on the unnamed occupants when the unlawful detainer complaint is served. When the sheriff arrives to enforce the writ of possession (that is, to evict the tenants [see writ of possession]), an occupant whose name does not appear on the writ of possession, and who claims a right of possession, may fill out a **Claim of Right to Possession** form and give it to the sheriff. The sheriff must then stop the eviction of that occupant, and must give the occupant a copy of the completed form or a receipt for it.⁴⁶⁴

Within two court days after completing the form and giving it to the sheriff, the occupant must deliver to the Clerk of Court the court’s filing fee (or file an Application for Waiver of Court Fees and Costs if the occupant is unable to pay the filing fee). The occupant also should deliver to the court an amount equal to 15 days’ rent for the rental unit (the writ of possession must state the daily rental value of the rental unit).

Five to 15 days after the occupant has paid the filing fee (or has filed a request for waiver of the fee), and has deposited an amount equal to 15 days’ rent, the court will hold a hearing. If the occupant does not deposit the 15 days’ rent, the court will hold the *within five days*.

At the hearing, the court will decide whether or not the occupant has a valid claim to possession. If the court decides that the occupant's claim to possession is valid, the amount of rent deposited will be returned to the occupant. The court will then order further proceedings, as appropriate to the case (for example, the occupant may be given five days to answer the landlord's complaint and defend the eviction action).

If the court finds that the occupant's claim to possession is not valid, an amount equal to the daily rent for each day the eviction was delayed will be subtracted from the rent that is returned to the occupant, and the sheriff or marshal will continue with the eviction.⁴⁶⁵

⁴⁶¹ Code Civ. Proc. § 415.46.

⁴⁶² Code Civ. Proc. § 1174.3.

⁴⁶³ Code Civ. Proc. § 415.46.

⁴⁶⁴ Code Civ. Proc. § 1174.3.

⁴⁶⁵ Code Civ. Proc. § 1174.3.

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