



Community  
Legal Aid SoCal

Advocates for Justice in Orange and Los Angeles Counties

# UD Answer Clinic

October 24, 2022

# GOALS OF PRESENTATION

- Provide an overview of how the Unlawful Detainer Answer Clinic will work.
- Give a brief overview of Unlawful Detainer law. Not going deep into the substantive law.
- Provide a primer on how to use Lawyaw.

# Unlawful Detainer Answer Clinic



# Logistics

- Tuesdays and Thursdays from 9:00 to 3:00.
- Three start times for calls:
  - 9:30 am-Log on to Zoom invite between 9:00 and 9:30.
  - 10:15 am-Log on to Zoom invite between 9:45 and 10:15.
  - 1:30 pm-Log on to Zoom invite between 1:15 and 1:30.
- Will be given assignment including name and conference call number for the client you will be calling and a copy of any paperwork we have for the Client.

# Day of Clinic

1. Log into Zoom at least 15 minutes before the clinic to work with the Legal Aid Attorney to issue spot and form a tentative game plan. You should review the Complaint and case notes before the meeting.
2. Call the conference line at the scheduled appointment time and gather the information and fill out their fee waiver.
3. Once the initial client interview is complete, tell the client to hold on the line while you review their information with the Legal Aid Attorney on Zoom.
4. Enter the conference line back to let clients know the next steps such as level of service (full rep vs. pro per) and what they should expect.
5. You will either work on the answer and ask the client to hold or work on a demurrer and dismiss the client. Make sure you confirm game plan with staff attorney and have them review all documents before signing off.

# Unlawful Detainer Law Overview

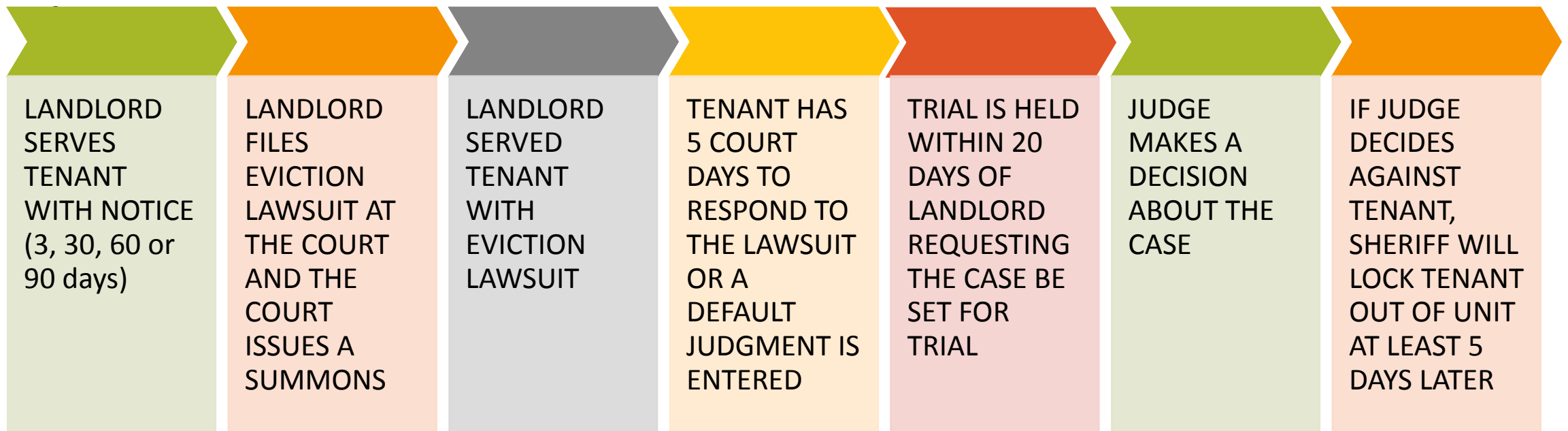


# Understanding the Role of a Pro Bono Attorney

1. Issue spotting and identifying the applicable law/defense is very difficult and new volunteers are not expected to do this on their own. The staff attorney will create a game plan which you will help execute.
2. Landlord tenant law is highly technical and has never been more complex. Focus on your individual case and you will gain expertise over time.
3. First step is to familiarize yourself with the UD process at clinic, with the ultimate goal of full representation.
4. For co-counseling, you will have excellent support from experienced attorneys who will take the lead on your first cases. We have an extensive pleading bank and are easily accessible.

# Unlawful Detainer-General Process

- Unlawful Detainer is the legal term for eviction lawsuit in California.





# Understanding the Layers of Protection (30,00 foot View)

1. Basic Tenant Protections-Available to Everyone and Should be available forever.
2. Tenant Protection Act (TPA)-Generally Available to Tenants who have lived in a property for over a year. Requires that Landlord have a just cause reason for Eviction. There are several exceptions (don't worry about these now). Will require relocation assistance IF .

# Notices

## WHY ARE NOTICES IMPORTANT?

- Unless there is a rare exception landlord must start the eviction process by serving the tenant with a written Notice.
- Due to the summary nature of eviction procedures, the law requires **STRICT COMPLIANCE** with all statutory notice requirements. Small errors from landlord can result in a victory for tenant (i.e. LL doesn't include phone number on nonpayment notice, or statutory language about abandoned property in 60 day notice to quit).

# Notices: 2 Broad Categories

## 1. No Cause Evictions

Notice that does not allege any reason for evicting a tenant. Permitted under basic landlord tenant law but not the Tenant Protection Act or Covid Relief Act.

## 2. Just Cause Evictions include 2 types below. Required in TPA and Covid Relief Act cases.

### a. No Fault just cause evictions

- Notice that includes a reason for evicting a tenant is no fault of the tenants like owner move in, or selling the property to someone who is moving in. Requires one month of relocation/one month of rent waived.

### b. At Fault just cause Evictions

- Notice alleging tenant did not pay rent, violated the lease, or created a nuisance

# Basic Protections: No Cause Eviction Notices

## 30 Day Notice to Quit

### When it Can Be Used:

- When a tenant is ***within their first year*** of tenancy.
- Can be served at any time if tenant is on a month to month tenancy or 30 days before the expiration of a one-year lease.
- When the tenant is not protected by the TPA.

### What must be in the notice:

- Instruct the tenant they must move out in 30 days.
- Include substantially similar language to:

“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.”

### Applicable Code:

Civil Code 1946.1.

# Basic Protections: No Cause Eviction Notices

## 60 Day Notice to Quit

### When it Can Be Used:

- When a tenant has resided in a property ***more than one year*** but the tenant is not protected by the TPA
- What must be in the notice:
- Instruct the tenant they must move out in 60 days.
- Include substantially similar language to:

“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.”

### Applicable Code:

Civil Code 1946.1.

# Fault/Cause Eviction Notices

## 3 Day Notice to Perform or Quit

### When it Can Be Used:

- When a tenant has committed a curable lease violation.
- Can be used regardless of the type of protection (TPA or Covid Relief Act)

### What must be in the notice:

- A statement regarding what behavior violated the lease provision.
- An opportunity to cure within 3 days, excluding Saturdays, Sundays and judicial holidays.

### Applicable Code:

CCP 1161(3)

# Fault/Cause Eviction Notices

## 3 Day Notice to Quit WITHOUT opportunity to cure

### When it Can Be Used:

- When a tenant has illegally sublet the unit, committed waste at the property, permitted or maintained a nuisance at the property, or illegal activity
- Very severe remedy for landlords. We often dispute whether the violation was really that bad and whether it was curable.

### What must be in the notice:

- Describe the behavior that led to the service of the notice.
- Instruct the tenant they have 3 Days to vacate.

### Applicable Code:

CCP 1161(4)

# Fault/Cause Eviction Notices

## **3 Day Notice to Pay or Quit**

### When it Can Be Used:

- Can be used when a tenant is behind on rent.
- Can be used under Basic Protections and TPA.
- What must be in the notice:
- Provide the opportunity to pay within 3 days, excluding Saturdays, Sundays, and judicial holidays.
- The precise amount of rent owed:
  - Can not include late fees, utility charges, or other fees.
  - Must not include rent that is more than 1 year old.
- Name, address, and telephone number of the person who is to be paid.
- If payment is required to be made in person, the usual days and hours someone will be available to accept rent.

### Applicable Code:

CCP 1161(2)



# Subsidized Housing and Mobile Home Notices

- Both mobile homes and subsidized housing have their own notice requirements with special rules.
  - Mobilehome Residency Law – Civil Code section 798 *et seq.*
  - Section 8 – 24 CFR 982.310 *et seq*

# Special Protections: the Tenant Protection Act



# Tenant Protection Act (TPA)

**The Property is subject to the TPA if:**

- 1) A tenant has occupied the premises for 12 months or more**
- 2) Property has been issued a certificate of occupancy 15 years ago**
- 3) AND not otherwise exempted under the law**

# Tenant Protection Act (TPA)

## **IF the TPA Applies then Just Cause MUST be Stated in the Notice**

- “The owner of the residential property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate tenancy.” Civil Code 1946.2.
- Creates a distinction “at fault” just cause and “no fault just cause.”
- For “no fault” just cause, landlord has to waive one month rent or pay one month rent in relocation.
- Curable lease violations require 2 notices, a notice to cure or quit AND a notice to quit.

# Tenant Protection Act (TPA)

We could give an entire training on the TPA, but just be aware of these high level concepts.

- For no fault just cause reasons, look at Civ. Code sec. 1946.2(b)(2), which includes things like owner move in and removing the property from the rental market.
- For at fault just cause, look at Civ. Code sec. 1946.2(b)(1), which includes nuisance, nonpayment of rent, and serious lease violations.

# Types of Responses and Defenses



# Types of Responses

- Demurrer
- Motion to Quash (probably not going to use)
- Answer

# Demurrer

## When it Can Be Used:

- When the Complaint is defective on its face (including any attachments).
  - Examples: Notice is missing a critical element; Complaint is filled out improperly.
- When the Complaint is confusing.
  - Examples: Amount due in the notice does not match amount due in Complaint.

## Advantages of a Demurrer:

- Gives client more time because it is a regularly noticed motion.
- Will result in the dismissal of the case if defect is in the Notice.
- Provides leverage in negotiations.

## Timing of the Motion:

- Motion should be set 16 court days from the date of serving the motion plus time for service.



# Answer

## When it Can Be Used:

- Always an option when responding to a UD.

## Advantages of a Answer:

- Quick to prepare.
- Can include any defense.

## Jury Trial Demands:

- Need to speak with each client about jury demands and if they wish to ask for them.
- Best practice is to file jury trial demand with Answer to UD. See Code of Civil Procedure section 631 for deadline for jury trial demand.

# Defenses

## Common Defenses-Staff Attorney will issue spot

- Habitability
- Repair and Deduct
- Waiver/Acceptance of Rent
- Notice Defects
- Retaliation: Based on Statutory and Common Law
- Discrimination/demanding info. regarding immigration status
- Standing and Lack of Capacity
- Covid-19 Related Defenses
- Miscellaneous

# Defenses

## Defense: Habitability (CACI 4320)

- All premises are required to meet health and safety standards. *Green v. Superior Court* (1974) 10 Cal.3d 616.
- Violations have to be substantial
- Look at Civil Code 1941.1 for list of requirements
- Generally used in nonpayment cases BUT can also be pled in other cases to reduce holdover damages and can inform other defenses.
- If tenant wins at trial, they will have to pay a reduced amount within a few days. If they don't pay judgment for possession reversed.
- If code enforcement cited more than 35 days ago and LL didn't fix? Landlord cannot collect ANY rent (Civil Code 1942.4)

# Defenses

## Defense: Repair and Deduct (CACI 4326)

- Tenant reported needed repairs to Landlord
- Landlord fails to respond in time. Thirty days is presumed reasonable, but it can be shorter for more serious issues
- Tenants make the repairs and withholds rent
- Amount withheld cannot exceed one month rent and cannot be exercised more than twice a year
- Only used in nonpayment cases

# Defenses

## Defense: Waiver (CACI 4324)

- Landlord accepted some payment after notice to pay rent or lease violation notice expired (kind of like reinstating the tenancy) OR
- Landlord waived a longtime breach by accepting rent (think of no pet policy)
- Assert even if there is an anti-waiver provision
- This can be fact intensive

# Defenses

## Defense: Notice Defects (Legal Aid Attorney will Issue Spot)

- Notice is the foundation for the Unlawful Detainer. If the notice is defective, the landlord is not entitled to possession. Strict compliance is the rule. Kwok v. Bergren (1982) 130 Cal.App.3d 597, 599-600,
  - Improper service
  - Notice must be attached to the complaint. CCP 1166(d)(1)(A).
  - Wrong notice length based on type of case.
  - Does not include required language or advisories
  - Overstatement of rent due (consider AB 1482 rent limits)
  - Facts stated in the notice are false or too vague
  - Even if facts are true, the breach is trivial and doesn't meet legal requirements for eviction. Boston v. Juarez 2016) 245 Cal.App.4th 75
  - Mobilehome substantive laws (e.g., failure to follow procedures to issue a notice to cure or correct).
  - Does not comply with COVID-19 Protections. CCP 1179 et. Seq.

# Defenses

- Defense: Retaliation (Statutory and Common Law) (CAC 4321)
  - Statutory retaliation applies under Civil Code 1942.5 if tenant is up to date on rent, asserts right, and is served a Notice to Quit or rent increase notice. Common law retaliation is independent of statutory relation
  - Note: Landlords likely to retaliate against tenants for asserting COVID-19 protections.
  - Ask tenants why they think LL is doing this

# Defenses

## Defense: Discrimination (CACI 4321)

- Protected classes: Sex, color, race, religion, marital status, national origin, immigration status/citizenship, ancestry, familial status, disability, source of income (including Sec. 8), age, sexual orientation, arbitrary trait.
- Landlord is motivated to terminate tenancy based on protected class.
- Disparate treatment (intentional discrimination) vs. Disparate Impact (Facially neutral policy that does not intend to discriminate, but disproportionately affects members of a protected class and does not have a legitimate business reason behind it.)
  - Example of Disparate Treatment: LL refuses to rent to family because they are Black.
  - Example of Disparate Impact- LL refuses access to the pool by family sizes larger than one person, which disproportionately impacts families with children.



# Defenses

## Discrimination: Reasonable Accommodations

- Reasonable Accommodation to a disability: landlord must grant an RA if tenant (1) has a disability; (2) accommodation is needed to give tenant equal use and enjoyment of property; (3) the request is reasonable
- Common situations: tenant's disability causes noise or arguing.

Note: Under CA DFEH Regulations, the tenant can request an accommodation at any time, including, for the first time in an eviction, and post-eviction. 2 CCR 12176(c)(8)(B).

# Defenses

## Defense: Standing/Lack of Capacity

- Standing: The owner listed in the Complaint is not the actual owner or real party in interest as required by Code of Civil Procedure section 367. You can search on Westlaw/Lexis or the OC Recorder's website:

<https://www.ocreorder.com/services/documents/copies>

- Lack of Capacity: The owner is an LLC and is either not registered with the CA or the registration is suspended. Revenue & Taxation Code 22301

<https://businesssearch.sos.ca.gov/>

- Foreign Corporation failed to obtain "certificate of qualification" from CA Secretary of State as required by Corporations Code 2105 and may not maintain any action or proceeding commenced prior to compliance with Section 2105 upon intrastate business as specified by Corporations Code section 2203(c).

# Defenses

## Defense: Domestic Violence/Seeking Emergency Assistance (CACI 4328)

- Landlord is attempting to evict tenant based on factors related to domestic violence, stalking, sexual assault or other abuse.
  - Requires documentation such as restraining order or declaration by qualified professional (doctor, caseworker, counselor, etc).
- Landlord is attempting to evict based on tenant seeking emergency assistance.
- Look for this defense when you see notices alleging noise complaints, fighting, or police involvement

# Defenses

## Miscellaneous Defenses

- Estoppel
  - Breach of the Covenant of Good Faith and Fair Dealings
  - Unclean hands
  - Civil Code 1632 defense (notice/lease has to be in same language tenancy was negotiated in)
  - Failure to pay 1482 relocation
  - Other equitable and common law defenses
  - Be creative
- Not an exhaustive list.

# Working With Low-Income Clients

## Tips For Working with Low-Income Clients

- Use everyday language and avoid legalese
- Don't assume that the client understands
- Parroting-Repeat your understanding of the events and ask if that's correct
- Avoid judgment, especially when you think something should be easy or you disagree with a client's choice
- A great defense usually means human suffering, so don't show inappropriate happiness
- Always ask if the client knows anything else that they think you should no (hidden defenses and evidence)

# Working With Low-Income Clients

## Tips For Working with Low-Income Tenants

- Huge power discrepancy between landlord and tenant
- Understanding the pettiness and fiefdom mindset some landlords and property managers have
- Understanding that people of color might be rightfully afraid to report incidents to the police
- Do NOT re-traumatize a client by repeating offensive language
- Understand that a person on the edge of eviction usually has many problems they are trying to address at the same time

# Lawyaw



# Documents to Be Prepared

You will work with a Legal Aid Attorney who will train you on the program.

- UD-105-Answer
- FW-001-Fee Waiver



# Documents for Client to Sign

- UD-105 Answer
- FW-001 Fee Waiver
- Jury Trial Demand (possibly).
- Citizenship Attestation
- Retainer

# Questions?