An Unlawful Detainer action is a "Special Summary Proceeding", lawsuit that entitles the landlord to statutory priority over other civil cases. Your action still falls in this class as long as possession is at issue, once you get possession the case becomes a general civil action or you can dismiss the case and refile it as a small claims action which can be seen as the better way to proceed. Because Unlawful Detainer actions are a special proceeding, they are covered under different laws than a regular law suit and they move at a much faster pace.

## ARRIETA CLAIMS

Arrieta claims are being explained before any explanation of the filing of the unlawful detainer since you must decide prior to filing if you desire to have a Pre-Judgment Claim Of Right to Possession Form served with your lawsuit on any potential occupants of the premises.

In the case of Arrieta vs, Mahon, now codified as CCP1174.3, the Supreme Court of the State of California held that before any person may be forcibly evicted by the levying officer, they must have an opportunity to be heard.

We strongly recommend serving the prejudgment form with the original summons and complaint. This is very important when you have adults living in the property and you are not sure who they are or what their names are.

## EVICTION & CO-SIGNERS

A co-signer is a guarantor that the actual tenant will perform under the lease or rental agreement and specifically will pay the rent. A co-signer does not live at the leased premises.

An unlawful detainer is intended to be against those persons who reside in the premises. It is my professional opinion that the co-signer may not technically be a proper party in an unlawful detainer action because he does not live at the leased premises.

However, I am also aware that the co-signer is generally the only person that you could collect a judgment against, and that you don't want to have to file a second lawsuit against the co-signer.

I know many fine, ethical attorneys who do name co-signers in the unlawful detainer actions to save the second lawsuit being filed. I think the real issue is service of the co-signer because they do not live at the address of the tenants and require a second service. This is not at issue if the co-signer files an answer to the unlawful detainer action, but if they are defaulted it is.

The co-signer can come back to court and have the default judgment set aside against them for lack of proper service. I believe the best procedure is to pay an additional fee to have them served by a registered process server at their address, thereby avoiding the problem. Many times, they will want to buy the lawsuit away so as not to have their credit ruined. Getting the co-signer served will probably slow your eviction down a few days, but it is the safest thing to do.

It might be advisable to have us write a letter to the co-signer after the three day notice to pay or quit has been served to try and resolve the matter, advising him or her that a lawsuit would affect them if a judgment is entered on the record.

## ADDRESSES MUST BE CORRECT

An unlawful detainer is the process of obtaining a court order to evict tenants from your real property. In order to evict an individual or individuals, the Sheriff must serve the parties involved and they require the address to be correct.

**It is of utmost importance that you give us the correct address and that you have the correct address on your Notices and contracts.**

If we are not provided with the correct address or you have listed the wrong address on a contract or notice we may have to redo the case and you will be charged for another eviction. Sometimes, the street signs or posted numbers at a property may be different than what is on your agreement, the sheriff will go off of what is posted physically at the property.

## NOTICES MUST BE ACCURATE

Typically, a legally sufficient notice must be served upon a tenant prior to filing an Unlawful Detainer action. In most cases the notice will be a Three Day Notice to Pay or Quit and / or a Thirty Day Notice to Quit.

Generally, if a tenant is behind in their rent payments, a Notice to Pay or Quit is the form that is usually served upon them. The notice must NOT overstate the amount of rent due by even one dollar. If the rent owed is $999 and the landlord asks for $1,000 on the Notice to Pay or Quit, the landlord will likely lose his case at trial and will have to start the eviction process over again. This will cost another eviction fee and add an additional 6-8 weeks time to recover possession of the property.

For a residential eviction, most judges hold that a Three Day Notice to Pay or Quit may only demand rent, not late charges, security deposit, utility fees, or any additional charges. The landlord may serve a Three Day Notice to Perform Covenant or Quit to collect those charges. However, in most cases we advise against filing a case based strictly on uncollected late charges or other fees, even where the lease allows for such.

If the tenant offers the full amount of rent demanded on a 3-Day Notice to Pay or Quit, the landlord must accept the tender of rent by the tenant. Landlords are not required to accept a late (beyond the date stated in the 3-Day Notice) or partial tender of the rent.

If you accept any amount of money after the service of the Notice, you have waived your rights to proceed under the Notice and evict your client (example: If you serve a 3-Day Notice to Pay or Quit and accept $20, a new notice must be served). This rule does NOT apply to commercial convictions under CCP § 1161.1.

## SERVICE OF A 3-DAY NOTICE TO PAY OR QUIT

Notice must be served on the tenants. If more than one tenant signed a written rental agreement, the notice can be served on only one of the tenants. If the agreement is oral, it is better to serve a separate notice on each party. I always name "Does 1-10" on a Three Day Notice and include any tenants who have signed the lease or any tenants that I know are living on the property. If there are persons living on the property and the landlord does not know who they are, I strongly recommend that a pre-judgment form be served on the tenants with the summons and complaint.

It is important to note that if the rent is due on the 1st of the month, it is actually due on the first business day of the month. If the 1st is a Sunday and Monday the 2nd is a legal holiday, the first business day would be the 3rd of the month and the 3-Day Notice to Pay or Quit could not be served until the 4th of the month.

If a landlord wants to evict a tenant even if the tenant pays the rent that is due, a Three Day Notice to Pay or Quit may be served with a 30-Day Notice (or 60-Day Notice with Just Cause if they have been there for more than a year). The landlord is in essence telling the tenant that even if rent is paid within three days, he still wants the tenant to move. If the tenant does not pay the rent, the unlawful detainer action is filed based upon violation of the Three Day Notice to Pay or Quit. If the tenant does pay then fails to move at the expiration of the 30 Day or 60 Day Notice, unlawful detainer can be filed. A notice may be served in one of three ways:

- Personal Service
- Service by Posting
- Substituted Service

Personal Service means that the notice is personally handed to the tenant. Personal service is effective as being handed to only one person on the notice. The tenant does not have to sign for the notice. If the tenant refuses to take the notice in hand, you drop it at their feet and tell them they are served.

Service by Posting may be effectuated by posting a copy on the door of the residence and mailing a copy to each tenant. You must first attempt to serve the tenants in person by knocking on the door. If nobody answers, the notice must be firmly attached to the door so it does not blow away, then mail a copy of the notice to the tenants at their address. This method of service is called "Posting and Mailing" or "Nail and Mail."

Substituted Service is another means of serving a tenant. With this method you knock on the door and if a competent adult non-tenant answers the door and informs you that the tenants are not home, you hand the notice to the adult with instructions to give it to the tenant. The landlord or process server should get the individual's name and note their description. The notice then must be mailed to each of the tenants.

Upon completion of service a Proof of Service must be filled out under penalty of perjury stating who was served, by which method they were served, how, when, and where they were served. The Proof of Service must be signed and dated by the individual who served the notice. A copy of the served notice, proof of service and the rental agreement (if you have one) will need to be supplied to our office prior to filing a case for review and attachment to your complaint. We will also require you to fill out an attorney-client contract (retainer agreement) and a questionnaire.

## 30-DAY NOTICE TO QUIT
## 60-DAY NOTICE TO QUIT
## 90-DAY NOTICE TO QUIT

In a month to month tenancy of less than a year, either party may terminate the tenancy by service of a Thirty Day Notice to Quit. In most cases a landlord does not have to provide a reason.

Exceptions to this rule are if the lease is with government housing such as Section 8 or in a rent control area such as in LA or Santa Monica, then "Good Cause" must be stated on the notice as to why the landlord is evicting the tenant. It is now generally believed that if the lease involves government housing a 90-Day Notice to Quit must be served on the tenant. On any type of notice to quit a landlord may not discriminate based upon race, religion, ethnic background, marital status (unmarried persons living together), or sexual orientation.

A landlord may not serve a 30-Day Notice on a tenant because the tenant has made complaints about the property to a governmental agency or has threatened to withhold rent. We prefer to know why you are serving a Notice to Quit on a tenant because it is important that we serve the proper notice for the proper reasons.

A landlord must provide an At Fault just cause or No Fault just cause on any 60 day notice served to any occupant who has resided in a property for more than a year. These Just causes are varied and should be looked at on a case by case basis. Additionally, there are exemptions to this Just cause requirement which are also varied, and described in AB 1482.

## SERVICE OF UNLAWFUL DETAINERS

Our office prepares, files and serves the Unlawful Detainer action. Each tenant must be served individually. We hire a bonded registered process server to serve the Unlawful Detainer. This company has worked for us for over 15 years. They are highly dependable and understand the need for speedy service in an unlawful detainer case. They will follow statutory legal procedure and get your tenant served as quickly as is legally possible.

After the process server has obtained "due diligence" to personally serve notice upon the tenants and failed to do so (typically four or more attempts at different times of the day and night over a period of at least three days), the defendants may be served by substituted service. This means leaving a copy of the unlawful detainer action with a non-tenant adult in charge of the premises and mailing a copy to each tenant.

If tenants are avoiding service and nobody will answer the door, our office will request an order from the court for posting and mailing the notice once the process server has obtained "due diligence." It typically takes a judge 1-10 days to sign an order for posting. Once the order is signed by the judge the complaint may be served by posting a copy on the door for each tenant and mailing a copy to each. Because posting orders are the slowest way to serve the summons and complaint, we only take this route when all other efforts to effectuate service have failed.

A tenant who is personally served has 5 court days to respond to the complaint and file the proper paperwork with the court. If the tenant has been served via substituted service or by posting & mailing the complaint, they have 15 court days to respond to the complaint.

## TENANT'S FAILURE TO RESPOND

If the defendants fail to respond in a timely manner to the complaint, a clerk's Judgment for Possession is then filed with the court. Once the judgment has been entered by the clerk, a Writ of Possession will be issued. The Writ will then be taken to the Sheriff's office and the Sheriff will execute it. This generally takes somewhere between 10-21 days depending upon the Sheriff, court, time of year, and whether or not an Arrieta claim has been filed. The average time of lockout after the Writ has been issued is about 14 days.

## TENANT'S RESPONSE

Tenants usually file responses with the court solely to delay the eviction process. If a tenant does file a response it is usually an answer. At this point we file a request for a trial date. The filing of an answer delays the issuance of the Writ of Possession by 14-21 days.

Tenants sometimes file other responses with the court, including motions to quash, motions to strike, demurrers, motions to set aside a default and various requests for stays. These motions are usually just delay tactics on the tenant's part. However, each of these requires a court appearance by our office, and therefore an appearance fee.

## DISCOVERY

Full discovery is permitted in unlawful detainer actions, however we find that it is usually not necessary to request discovery from the tenants. In some cases the tenant or their attorney will serve us with requests for discovery. Some of the methods of discovery that might be used include depositions, interrogatories, demands for inspection of documents and other tangible things, and requests for admissions.

There are tight timeframes mandating when discovery must be produced in an unlawful detainer action. Interrogatories are due within 5 days of service. All discovery in an unlawful detainer case must be complete within 5 days of the trial date. Your trial may be delayed if the discovery requested is not produced in a timely fashion. If your case involves discovery, the cost of your eviction will increase. We try to resolve the discovery issues with opposing counsel prior to responding to the discovery in an effort to keep your costs down. Discovery is not part of a basic unlawful detainer and you will be billed for work that is necessary to abide by the rules of discovery and keep your case moving forward.

## COURT TRIAL

We expect you to show up at least a half hour before the time of trial and to be professionally dressed for court. Most courts have a dress code that they enforce. We will go over the answer and your testimony prior to trial.

The attorney will ask all the questions that you will need to prove up your case. It is best if you just answer with a "yes" or a "no." I do almost all of my appearances on my cases myself, but I cannot be at two places at once and there will be times the courts schedule my cases that way. There will be occasions when I have another attorney appear on my behalf. The other attorney and I will discuss your case prior to trial, and all the attorneys who appear for me are highly experienced unlawful detainer trial attorneys who also sit as Judge Pro Tem. They will do a very professional job for you.

## WRIT OF POSSESSION

Once a judgment has been obtained, either by default or after trial, a Writ of Possession must be issued. The Writ of Possession is a court order allowing the Sheriff to evict tenants and place the landlord back into peaceful possession of the premises. You do not have possession until either the tenant gives you the keys to the property or the Sheriff returns possession to you. It is best to stay away from the property when the unlawful detainer ins being processed.

A Writ must be posted on the premises by the Sheriff. The papers posted by the Sheriff let the tenants know when the Sheriff is going to evict them (typically 5 days after the Writ is posted). All Writs will state that the lockout will occur at 6:00 am. After you are informed of the actual time of the eviction, please do not tell the tenant.

The actual lockout typically takes place between 10-14 days after the Sheriff receives the Writ. Our office is usually informed of the lockout date one or two days prior.

## LOCKOUT

**Please do NOT call us for the lockout date. We will call you as soon as we find out the date.**

The landlord or agent must meet the Sheriff at the property for the lockout at the designated time. You must show up a half hour early and stay at least a half hour later before you call someone to find out about about the Sheriff. You will meet the sheriff in their squad car on the street, they will not approach you, you must approach them. You should have someone to change the locks for you when the Sheriff shows up. If nobody shows up to meet the Sheriff at the lockout, it will be canceled and it will be at least another 10 days before the Sheriff will come back out (additionally they would recharge their fee to complete the lockout).

**I would suggest having a locksmith change the locks on the property at the lock out.**

## TENANTS WHO FILE BANKRUPTCY

In California, tenants frequently file Bankruptcy to delay the eviction process. When a tenant files Bankruptcy, the Bankruptcy "stays" all state court actions against the tenant and in most instances will stop the eviction proceedings.

To proceed against the tenant, the landlord must file a Motion for Relief from the Automatic Stay in the Bankruptcy Court where the tenant filed for Bankruptcy. This should be done along with a Request to Shorten Time if the landlord has already served the tenant with Notice or has obtained a judgment for possession.

The process of obtaining Relief to Proceed will slow your eviction down from 10-30 days. If the landlord chooses not to file a Motion for Relief then it will delay your eviction for up to six months, depending on whether your tenant filed for Chapter 7 or Chapter 13.

**It is important that a landlord file a Motion for Relief From the Automatic Stay immediately upon finding out that the tenant filed Bankruptcy.** Our office can handle this for you, however there is a separate fee that must be paid in advance.

## ABANDONED PERSONAL PROPERTY

When personal property remains on the premises after a tenancy has been terminated and the tenant has vacated the premises, the landlord shall give written notice to the tenant and any other person the landlord reasonably believes is the owner of such personal property.

The Notice regarding personal property that has been left behind shall describe the property in a reasonably adequate way to permit the owner of the property to identify it. The Notice shall advise the person to be aware that reasonable storage costs may be charged before the property is returned, where the property may be claimed, and the date before which the claim shall be made.

The date specified in the Notice shall be a date not less than 18 days after the Notice is personally delivered or, if mailed, not less than 18 days after the notice is deposited in the mail. The Notice should contain one of the following statements:

• 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 a right to bid on the property at sale. After the property is sold and the cost of storage, advertising, and sale are deducted, the remaining money will be turned over to the County. You may claim the remaining money at anytime within one year of the County receiving the money.

• Because the property is believed to be worth less than $700 it may be kept, sold or destroyed without further notice if you fail to reclaim within the time indicated above.

**Our firm strongly suggests that you work with your former tenant to have him or her remove their own possessions from the property, even if you have to rent a storage place for them and pay the first month's rent.**