

**DISTRICT RIGHT OF WAY PROCEDURE:
VACATING PREMISES, UNLAWFUL DETAINER ACTIONS****Introduction**

This procedure is intended as a **guide** to the steps necessary for the California Department of Transportation (Department) to have property vacated. Two scenarios are addressed here: (1) Department needs to re-assume control of the property, and (2) Department needs the tenants/occupants removed for failure to pay rent.

This is only a **guide**; each District has internal procedures that must be followed. These instructions outline a core of tasks necessary to efficiently accomplish the goal of vacating property.

The process is simple where the tenants and occupants comply with notices to vacate; but, it may be complex when they do not comply, requiring court action to resolve. Recent changes in court jurisdiction, or what each court may decide, have moved Unlawful Detainer (eviction) actions from Small Claims Court, where an attorney is not required, to the Superior Court, where an attorney must represent the Department. That means Right of Way Agents who previously were delegated authority to represent the Department may no longer do so. An attorney from Legal must handle all court documents and appearances.

When court action is required, time is of the essence. Completing each document accurately is critical to Unlawful Detainer court proceedings. Failure to completely and accurately fill out and sign the notices and documents will likely result in additional court appearances by the attorney or a dismissal of the action, thus requiring the process to begin again. These errors are costly to the Department.

Accordingly, Right of Way and Legal formulated this procedure through a joint effort to ensure proper and expedient handling of vacating property. If there are questions, **contact Legal immediately** for assistance.

UNLAWFUL DETAINER ACTIONS – EVICTION PROCESS

Preliminary Steps

1. Right of Way contacts tenant to discuss delinquent balance and its resolution. When an informal attempt to collect the balance fails, the eviction process may begin. This procedure is identical to the 30-, 60-, or 90-Day Notice for vacating premises where Department re-assumes control of the property.
2. Right of Way prepares a 3-Day Notice to Pay Rent or Quit or a 30-, 60-, or 90-Day Notice to Vacate for **EACH OCCUPANT** of the premises (court's requirement).

IMPORTANT NOTE: Accounting and Right of Way records must be reconciled prior to serving the 3-Day Notice. The **total amount due** from tenant must be accurate to the first of the month prior to service. Do not include any late fees when calculating the amount due from the tenant. The 3-Day Notice to Pay Rent or Quit may shall not include delinquent rent that is over a year old.

3. Right of Way prepares a Proof of Service or Proof of Mailing for the Notice after **EACH OCCUPANT** of the premises has been served. These forms must be signed and dated. If a 3-Day Notice to Pay Rent or Quit was served, the Right of Way Agent must enter the date of service on the RWPM Delinquency Screen. If a Notice to Vacate was served, the Right of Way Agent must enter the date of service on the RWPM Tenancy Screen.
 4. Right of Way should follow established District procedures for entering the information into the RWPM and notify Accounting **NOT** to accept rent payments. Accounting needs to flag the Rent Check Indicator (RCI) field on the RWPM Tenancy Screen. If rent payment is accepted, the eviction procedure must be terminated.
 5. Time periods for response/payment by occupants before legal action is taken:
 - **Personal Service** – 4, 31, 61, or 91 calendar days from service, including the day of service.
 - **Posted and Mailed or Substitute Service** – As a courtesy the Region/District may add additional days for service by this method, yet there is no legal requirement to extend the Tenant's/Lessee's response time when service is made by this method.
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UNLAWFUL DETAINER ACTIONS – EVICTION PROCESS (Continued)

6. Should the occupants respond to being served, Right of Way attempts to negotiate a settlement for the total amount due. A Stipulated Judgment is prepared **if** the negotiations are successful and the agreed-upon amount is collected in no greater than 12 months. ALL PAYMENTS MUST BE CASH, CASHIER'S CHECK, OR MONEY ORDER. Personal checks, third-party checks, and paychecks are unacceptable. If a negotiated settlement is reached and the tenant complies with the terms of the Stipulated Judgment, the Right of Way Agent must work with Accounting to reverse any billings and late fees in RWPM based on the settlement amount.

Process for Court Action

7. If the occupants fail to respond after the above time periods expire, Right of Way prepares a request for Unlawful Detainer action.
 8. Right of Way prepares and sends a package containing the following documents to the Deputy Chief Counsel of the Department's Legal Office that serves the District in which the property is located.
 - a) Unlawful Detainer Memorandum summarizing history of tenancy.
 - b) Copy of the 3-Day Notice to Pay Rent or Quit or Notice to Vacate for each person served.
 - c) Original signed and dated Proof of Service or Proof of Mailing for the applicable Notice for each person served.
 - d) Copy of memo to Accounting advising that payments are not to be accepted.
 - e) Original rental agreement and all amendments.
 - f) Rental diary.
 - g) A copy of current Superior Court Local Rules (rules that apply solely to that county's courts obtained from the Clerk of the Court) if Legal has not already been provided with a copy.
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UNLAWFUL DETAINER ACTIONS – EVICTION PROCESS (Continued)

Document Preparation by Legal for Filing by Right of Way

9. Legal provides to Right of Way for filing with the County's Superior Court:

A minimum of 8 copies of Summons and verified Complaint with a list of all defendants to be served, for distribution as follows:

- One for Superior Court
- One for Department's file
- One for Legal's file
- One for "Original"
- Two for each listed defendant (one for personal service or two for Posting and Mailing Service)
- Two for the Claim of Right to Possession (one for personal service or two for Posting and Mailing Service)

Claim of Right to Possession - two for any unknown persons claiming to live there (one for personal service or two for Posting and Mailing Service). This is necessary for giving notice to unnamed occupants.

Warrant for payment of service for each listed defendant and a warrant for service on the Claim of Right of Possession. (Check with the Sheriff's Department to obtain amount for service fees.)

District Procedure for Filing in Court and Serving Defendants

10. Right of Way signs the verification for the complaint and files the above documents in Superior Court, Civil Department.

11. Upon completion, Right of Way takes the filed, stamped, and signed documents to the Sheriff's Department for serving (and the warrant/payment). Retains the original Summons and a copy of the Complaint for the file and sends an endorsed copy to Legal.

UNLAWFUL DETAINER ACTIONS – EVICTION PROCESS (Continued)

Follow-up After Filing and Delivering to Sheriff for Service

12. Time periods for response by tenant/occupants before further action takes place:

- **Service on Occupants/Defendants** - Wait 4 working days to receive Proof of Service from the Sheriff's Office. If not received, call to determine when it was served.
- **Response to Service by Occupants/Defendants** - Wait 5 days if personally served, or 15 days if served by substitute service, from the date each was served, then call the Superior Court Clerk to determine whether a response has been filed by each defendant.

If response has not been received within the appropriate timeframe after being served, a Default Judgment may be filed. Contact Legal so the Default Judgment may be prepared and filed immediately.

13. Right of Way files the original Summons for each occupant/defendant with the original Proof of Service completed, signed, and dated at the Superior Court where the action was initially filed. Legal prepares an Application and a Writ of Possession and files it 2 or 3 days after the Default Judgment is received by the Court.

14. Right of Way files the Writ of Execution with the Superior Court where it was originally filed. When approved by the court, Right of Way delivers the Writ of Possession to the Sheriff's Office for completion of the eviction process.

Eviction Scheduling

15. The Sheriff's Office should be asked to contact Right of Way when the date is scheduled for eviction. Since the Sheriff's Department will not forcibly enter the premises, Right of Way should arrange for a locksmith to be present at the scheduled time in case entry is barred or to re-key the locks after gaining possession of the Premises.
