

# Claims

## 12010.1 CLAIMS OF RIGHT TO POSSESSION

- (a) Occupants of premises who have not been named in the Summons Unlawful Detainer may file claims of right to possession. Claims of right to possession fall into two categories.
  - 1. The prejudgment claim procedure, the unnamed occupant is given notice to file a claim prior to the unlawful detainer hearing.
  - 2. The post judgment procedure, the unnamed occupant is given notice along with the Notice to Vacate.
- (b) Prejudgment Claim of Right to Possession
  - 1. Is an alternative procedure which plaintiffs may elect to use in place of the existing procedures that provide for the filing of a claim of right to possession after judgment.
  - 2. If the prejudgment claim of right to possession form has been served with the summons and complaint upon the tenants and all occupants, the levying officer will not accept claims of right to possession after judgment unless the property is involved in a foreclosure. (CCP 415.46 or 1167 [\[1\]](#))
  - 3. When serving the Summons and Complaint upon a defendant/tenant, the person making the service shall make a reasonably diligent effort to ascertain whether there are other adult occupants of the premises who are not named in the summons by asking the person being served to identify any other adult occupants.
    - i. If any adult occupants are identified and available to be served, the person making the service shall serve each with a Prejudgment Claim of Right to Possession form with a Summons and Complaint attached.
    - ii. Service on occupants, which cannot be personally served, may be accomplished by the substitute service method or by leaving, posting and mailing copies as indicated.
  - 4. When judgment for possession is entered and a writ of possession is issued, enforcement of the writ shall apply to all tenants, subtenants, claimants and any other occupants of the premises ("Evict All").
  - 5. Unlawful Detainer Cases Where the Summons and Complaint Were Not Served Pursuant To CCP Section 415.46 [\[2\]](#)
    - i. Any person not named in the judgment for possession who resided at the premises on the date of the filing of the action may object to enforcement of the judgment against that person by filing a claim of right to possession.
    - ii. Persons asserting a claim at the premises shall be furnished the necessary Claim of Right to Possession form by the Levying officer.

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6. The court will mark the writs of possession that issue following service pursuant to CCP Section 415.46 [3].
    - i. All other writs of possession will be processed in accordance with existing procedures.
    - ii. The levying officer will serve or post a Claim of Right to Possession form with the writ at the same time the Notice to Vacate is served or posted.
  7. CCP 415.46(e)(2) [4] allows any tenant or sub-tenant to file a claim of right of possession up until the time of eviction, if the housing unit involved in the unlawful detainer hearing was the result of a foreclosure.
- (c) Processing the Claim of Possession
1. A claim of right to possession may be filed at any time after service or posting of the writ of possession, up to and including the time at which the levying officer returns to effect the eviction of those named in the judgment of possession.
    - i. However, if the writ is an "Evict All" writ, no further claims will be accepted.
  2. Section 1174.3 of the California Code of Civil Procedure [5] prescribes that the completed Claim of Right to Possession must be filed in person.
    - i. The occupant named on the claim shall be the person delivering the completed claim.
    - ii. The occupant presenting the completed claim must also present identification to the Deputy.
    - iii. Deputies should request a driver's license or identification card issued by the California Department of Motor Vehicles.
    - iv. If the claimant does not possess either, discretion should be used in accepting other identification, preferably with a picture, to identify the claimant. Refer to CCOM Section 12010.3 – Identification Requirement of Code of Civil Procedure.
  3. Upon receipt of a claim of right to possession, the levying officer shall indicate thereon the date and time of its receipt and forthwith deliver the original to the issuing court and a receipt or copy of the claim to the claimant and notify the plaintiff of that fact.
- (d) Procedure after the Claim Hearing
1. If the claim is denied, proceed with enforcement of the original writ of possession as deemed amended to include the claimant.
  2. The defendant is still allowed the original 5-day notice before the eviction can take place.
  3. If the defendant has had the full 5-day notice, an immediate eviction can be done.
  4. If the full 5-days have not passed, wait until after the 5th day then proceed with an immediate eviction.

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#### Reference

POST ORDER 11-10

#### **12010.2 THIRD PARTY CLAIMS: APPEAL UNDERTAKING REQUIREMENT**

- (a) California Code of Civil Procedure 917.9<sup>[1]</sup> and Witkin, CA Procedure 2nd, Appeal 178, states that an appeal does not stay the judgment or order if the court requires an undertaking in a sum fixed by the court, and the undertaking is not given.
  - 1. The Sheriff's Department is not authorized to turn back the plaintiff's undertaking unless an order to that effect has been included in the judgment order.

#### References:

POST ORDER 07-03

California State Sheriffs' Association Civil Procedures Manual

California Code of Civil Procedure <sup>[2]</sup>

9 Witkin Cal. Proc. Appeal § 278

#### **12010.3 IDENTIFICATION REQUIREMENT OF CODE OF CIVIL PROCEDURE SECTION 1174.3**

California Code of Civil Procedure 1174.3 <sup>[1]</sup> requires that people filing post-judgment claims of right to possession present their completed claim form in person with identification to the levying officer.

- (a) Identifications:
  - 1. The following are the primary types of identification that are acceptable:
    - i. Valid California Driver's License
    - ii. Valid California Identification Card
  - 2. However, any type of picture identification may also be accepted, examples include:
    - i. Passport
    - ii. Military I.D. card
    - iii. Out-of-state driver's license
  - 3. Other identification may be accepted at the Professional Staff Supervisor, Civil Sergeant or Justice Center Lieutenant's discretion.

#### Reference

POST ORDER 06-17

California State Sheriffs' Association Civil Procedures Manual