

# Kimball, Tirey & St. John LLP

## Prejudgment Claims: What are they and when should they be used?

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When an unlawful detainer lawsuit is filed in California, every adult residing in a property has the right to be heard in court. This is true even if the person is not a named resident, is not an authorized occupant, and even if the person is unknown to the landlord.

If an adult residing the premises was not named in the unlawful detainer lawsuit, that person can delay the lockout by filing a “third party claim of right to possession,” otherwise known as an *Arrieta Claim*, before the lockout.

A last minute third party claim can be avoided by serving a “prejudgment claim of right of possession” form. It is served when the unlawful detainer complaint is served. A prejudgment claim of right of possession form alerts all unnamed occupants of the property that an eviction action has been filed, and that they have the right to be heard and defend against the eviction. An unnamed occupant who wants to fight the eviction must complete the prejudgment claim form and file it with the court. Unnamed occupants rarely file a prejudgment claim form because if they do, they will automatically be named as an additional defendant in the unlawful detainer lawsuit. If a prejudgment claim of possession has been served, and the unnamed occupants do not complete and file the prejudgment claim form with the court, the unnamed occupants lose their rights in the property.

If a prejudgment claim form is not served, and if an unknown occupant files a last minute third party claim right of possession, the lockout will not occur as scheduled. Instead, the court will set a hearing to be held in approximately three to four weeks. At the hearing, the court will determine whether the claimant should have been named as a party to the unlawful detainer action.

At the hearing, if the claimant is found to be legitimate, the court could require the landlord to start over again with the eviction process, requiring the claimant be named as an additional defendant. If the claim is denied, the Sheriff will continue with the lockout.

Filing a prejudgment claim can delay the eviction process by up to 5 days, but only if all of the named defendants are personally served with the complaint. This is because prejudgment claimants have ten days to respond, whereas personally served named defendants only have five days to respond. A prejudgment claim will not delay the eviction process if one or more of the named defendants cannot be personally served, and are instead served by subservice, or posting and mailing.

A prejudgment claim should be seriously considered if there is any suspicion of unauthorized occupants. A lot of guest activity and/or unknown people seen in the unit are some indications that there may be unauthorized people living in the unit. A prejudgment claim should also be filed in post foreclosure eviction cases, when the new owner will probably not know who is residing in the property.

***KTS processes residential and commercial evictions on behalf of its clients. For more information concerning the contents of this article, please contact our firm at 800-338-6039 and visit our website at [www.kts-law.com](http://www.kts-law.com).***

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