

Kimball, Tirey & St. John LLP

Response Time Extended for California Tenants

Updated November, 2018

Effective September 1, 2019, under California [AB 2343](#) response time for California tenants has been extended.

- Code of Civil Procedure §1161 (2) and (3) is amended to reflect that the three day notice period after service of a notice to pay rent or quit or a notice to perform covenant or quit will not include judicial holidays, including Saturday and Sunday.
- Code of Civil Procedure §1167 is amended so that the five day period an unlawful detainer defendant has to respond to a notice of summons will not include judicial holidays, including Saturday and Sunday.

While not expressly stated in the new law, conservative landlords will not want to include weekends and court holidays in ten (10) day rent and covenant notices required under many affordable housing programs.

AB2343 does not apply to:

- 30 and 60 day termination notices (Code of Civil Procedure §1161(1)).
- Notices to quit based on unauthorized assignment, subletting, waste or nuisance (Code of Civil Procedure §1161(4)).

The text of the revised code sections is attached.

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Changes to the code sections are indicated below.

California Code of Civil Procedure §1161

A tenant of real property, for a term less than life, or the executor or administrator of his or her estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:

1. When he or she continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him or her; provided the expiration is of a nondefault nature however brought about without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable; including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, or licensee and the relation of master and servant, or employer and employee, or principal and agent, or licensor and licensee, has been lawfully terminated or the time fixed for occupancy by the agreement between the parties has expired; but nothing in this subdivision shall be construed as preventing the removal of the occupant in any other lawful manner; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the Civil Code.

2. When he or she continues in possession, in person or by subtenant, without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, *excluding Saturdays and Sundays and other judicial holidays*, in writing, requiring its payment, stating the amount which is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the property, shall have been served upon him or her and if there is a subtenant in actual occupation of the premises, also upon the subtenant.

The notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of his or her landlord, if applicable, he or she shall be deemed to be holding by permission of the landlord or successor in estate of his or her landlord, if applicable, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year, and the holding over for that period shall be taken and construed as a consent on the part of a tenant to hold for another year.

3. When he or she continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, *excluding Saturdays and Sundays and other judicial holidays*, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him or her, and if there is a subtenant in actual occupation of the premises, also, upon the subtenant. Within three ~~days~~ *days, excluding Saturdays and Sundays and other judicial holidays*, after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to the lessee or his or her subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of the premises let to a subtenant or held by a servant, employee, agent, or licensee, in case of his or her unlawful detention of the premises underlet to him or her or held by him or her.

4. Any tenant, subtenant, or executor or administrator of his or her estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his or her lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his or her successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter. For purposes of this subdivision, a person who commits or maintains a public nuisance as described in Section 3482.8 of the Civil Code, or who commits an offense described in subdivision (c) of Section 3485 of the Civil Code, or subdivision (c) of Section 3486 of the Civil Code, or uses the premises to further the purpose of that offense shall be deemed to have committed a nuisance upon the premises.

5. When he or she gives written notice as provided in Section 1946 of the Civil Code of his or her intention to terminate the hiring of the real property, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice, without the permission of his or her landlord, or the successor in estate of the landlord, if applicable.

As used in this section, tenant includes any person who hires real property except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

~~This section shall become operative on January 1, 2012.~~

California Code of Civil Procedure §1167

- (a) The summons shall be in the form specified in Section 412.20 except that when the defendant is served, the defendant's response shall be filed within five days, ~~including~~ *excluding* Saturdays and Sundays ~~but excluding all~~ *and* other judicial holidays, after the complaint is served upon him or her. ~~If the last day for filing the response falls on a Saturday or Sunday, the response period shall be extended to and including the next court day.~~
- (b) In all other respects the summons shall be issued and served and returned in the same manner as a summons in a civil action.