



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 13, 2013

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Title	Agenda Item Type
Unlawful Detainer: Answer to Complaint	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend form UD-105	January 2, 2014
Recommended by	Date of Report
Civil and Small Claims Advisory Committee	November 18, 2013
Hon. Patricia M. Lucas, Chair	Contact
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### Executive Summary

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise *Answer—Unlawful Detainer* (form UD-105) to allow a party to assert, as an affirmative defense, that the landlord terminated or failed to renew a tenancy based on acts against a tenant or a tenant's household member that constitute human trafficking. The revisions to form UD-105 will satisfy a legislative mandate in recent amendments to Code of Civil Procedure section 1161.3 and will incorporate amended statutory text that goes into effect January 1, 2014.

### Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 2, 2014, revise form UD-105 to incorporate new affirmative defenses as required by Code of Civil Procedure section 1161.3.

The proposed revised form is attached at pages 5–6.

## Previous Council Action

The Judicial Council initially approved form UD-105 in 1981 and has subsequently approved various revisions to it. Effective January 1, 2012, the Judicial Council revised form UD-105 to satisfy a legislative mandate in Code of Civil Procedure section 1161.3 by incorporating a new affirmative defense alleging that plaintiff seeks to evict defendant based on acts against a defendant or a member of a defendant's household that constitute domestic violence, sexual assault, or stalking. On June 28, 2013, in response to a further legislative mandate enacted in 2012, the council further revised the same item on form UD-105 to add acts of elder abuse to the list of grounds that could serve as a basis for the new affirmative defense. That revision to the form will be operative January 1, 2014.

## Rationale for Recommendation

Code of Civil Procedure section 1161.3<sup>1</sup> was enacted in 2010 and, in pertinent part, prohibited a landlord from terminating or failing to renew a tenancy based on an act or acts against a tenant or a tenant's household member that constitute domestic violence, sexual assault, or stalking. The 2010 legislation also required the Judicial Council to develop a new unlawful detainer form or revise an existing one that could be used to assert the grounds set forth in section 1161.3 as an affirmative defense. Upon the recommendation of the Civil and Small Claims Advisory Committee, the council revised form UD-105 to include the new affirmative defense as item 3i:

Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, or stalking. *(A temporary restraining order, protective order, or police report not more than 180 days old is required naming you or your household member as the protected party or a victim of these crimes.)* (Original italics.)

Two years later, the Legislature amended section 1161.3 to add acts that constitute abuse of an elder or a dependent adult to the acts for which a landlord was previously prohibited from terminating a tenancy. The amended statute also required that the Judicial Council, on or before January 1, 2014, develop a new form or revise an existing form that could be used by a party to assert these new grounds as an affirmative defense to an unlawful detainer action.

To comply with the 2012 amendments to section 1161.3, the advisory committee recommended approval of a revised item 3i of form UD-105 as follows (with the new text underlined):

Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, stalking, or abuse of an elder or a dependent adult. *(A temporary restraining order, protective order, or police report not more than 180 days old is required naming you or your household member as the protected party or a victim of these crimes.)* (Original italics.)

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<sup>1</sup> Unless otherwise noted, all statutes referred to herein are in the Code of Civil Procedure.

Because the revision was a minor change in the form, explicitly required by statute, and unlikely to generate controversy, the advisory committee recommended and the Rules and Projects Committee (RUPRO) of the council agreed that the proposed amended form did not need to be circulated for public comment. The council approved the revised form effective January 1, 2014.

This year once again, in Senate Bill 612 (Stats. 2013, ch. 130),<sup>2</sup> the Legislature has amended section 1161.3, this time to add acts that constitute human trafficking to the acts for which a landlord was previously prohibited from terminating or failing to renew a tenancy. And because once again the Legislature has mandated that the council adopt a new form or revise an existing one to include these new grounds, a further revision of item 3i is now required. In order to parallel the language of the statute, the advisory committee recommends that item 3i be revised to read as follows (with the new language underlined):

Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (*A temporary restraining order, protective order, or police report not more than 180 days old is required naming you or your household member as the protected party or a victim of these crimes.*) (Original italics.)

This revised text would mirror language that is used repeatedly in the amended statute.

Because the new law with the provision regarding human trafficking goes into effect January 1, 2014, and because the recently revised form UD-105 with the inclusion of the elder abuse provision will become operative on that same date, the advisory committee recommends that the further revisions to form UD-105 to include the human trafficking provision should go into effect at, essentially, the same time.<sup>3</sup> In this way, courts and parties would only have to deal with one new form UD-105 becoming operative in 2014.

Because this revision, like the last one, would be a minor change in the form, explicitly required by statute, and unlikely to generate controversy, the advisory committee recommended and RUPRO agreed that the proposed amended form did not need to be circulated for public comment. Because the form is completed by members of the public, rather than the court, there is no reason to delay the implementation of the form, particularly as a new form UD-105 will be going into effect in any case as of January 2014, whether or not is it this latest version.

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<sup>2</sup> Senate Bill 612 may be viewed at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB612](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB612).

<sup>3</sup> In order to avoid confusion between the two almost identical versions of form UD-105 recommended to the council this year, the form recommended in this report would have a January 2, 2014 effective date. Because January 1 is a holiday, the previous version would never actually be posted on the court's website, because the site would include this latest version as of the first business day in January 2014.

## **Comments, Alternatives Considered, and Policy Implications**

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise form UD-105 without circulation for comment, pursuant to rule 10.22 of the California Rules of Court,<sup>4</sup> because the revision is minor and unlikely to create controversy. The Judicial Council approved the relevant provision (item 3i) of current form UD-105 in 2011, after a proposal was circulated and comments were considered. As discussed above, the currently proposed revision is minor, incorporates amended statutory text, and will satisfy a statutory mandate. Circulating the revised form for comment is therefore unlikely to be beneficial and would unnecessarily consume limited judicial branch resources.

The Civil and Small Claims Advisory Committee briefly considered not recommending that form UD-105 be revised. The advisory committee decided against this approach because legislation requires the Judicial Council to develop a new form or revise an existing form for a party to assert the new affirmative defense, and revising form UD-105 is more efficient and will be more useful than developing a new form.

The committee also considered whether to recommend that the current revision to UD-105 not be made effective until July 1, 2014, the date by which the Legislature mandated adoption of a new or amended form including this revision to the law. The new grounds for the affirmative defense, however, become law in January 1, 2014. The committee concluded that making the form effective as soon as possible in January would not only make the form consistent with the law, but would also eliminate the potential burden and confusion on parties and the courts by adopting two slightly different versions of form UD-105 within a six-month period.

## **Implementation Requirements, Costs, and Operational Impacts**

Revising form UD-105 should not impose any significant implementation requirements or have any significant cost or operational impacts on courts, because the form is completed by litigants and the revisions are very minor. Courts that provide printed forms to litigants may incur some expenses replacing unused copies of the outdated form when the revised form becomes effective.

## **Attachments**

1. Form UD-105, at pages 5–6

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<sup>4</sup> Rule 10.22 of the California Rules of Court sets forth the procedure for an advisory committee to recommend that the Judicial Council revise a form. Subdivision (c) provides that a proposal must be submitted to the Rules and Projects Committee (RUPRO) with a recommendation that it be (1) circulated for public comment or (2) submitted to the council for approval without public comment. Paragraph (d)(2) provides that if the proposal presents a minor substantive change that is unlikely to create controversy, RUPRO may recommend that the council adopt it without circulating it for comment.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):   TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>11.08.13</b>  <b>NOT APPROVED BY</b> <b>JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff: Defendant:	
<b>ANSWER—UNLAWFUL DETAINER</b>	CASE NUMBER: _____

1. Defendant (each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs):

answers the complaint as follows:

2. **Check ONLY ONE of the next two boxes:**

- a.  Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000.)
- b.  Defendant admits that all of the statements of the complaint are true EXCEPT:
- (1) Defendant claims the following statements of the complaint are false state paragraph numbers from the complaint or explain below or on form MC-025):  Explanation is on MC-025, titled as Attachment 2b(1).
- (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (state paragraph numbers from the complaint or explain below or on form MC-025):  
 Explanation is on MC-025, titled as Attachment 2b(2).

3. **AFFIRMATIVE DEFENSES (NOTE: For each box checked, you must state brief facts to support it in item 3k (top of page 2).)**

- a.  (nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.
- b.  (nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c.  (nonpayment of rent only) On (date): \_\_\_\_\_ before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d.  Plaintiff waived, changed, or canceled the notice to quit.
- e.  Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- f.  By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.
- g.  Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage): \_\_\_\_\_  
  
(Also, briefly state in item 3k the facts showing violation of the ordinance.)
- h.  Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- i.  Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, stalking, **human trafficking**, or abuse of an elder or a dependent adult. (A temporary restraining order, protective order, or police report not more than 180 days old is required naming you or your household member as the protected party or a victim of these crimes.)
- j.  Other affirmative defenses are stated in item 3k.

CASE NUMBER: \_\_\_\_\_

3. AFFIRMATIVE DEFENSES (cont'd)

k. Facts supporting affirmative defenses checked above (identify facts for each item by its letter from page 1 below or on form MC-025):

Description of facts is on MC-025, titled as Attachment 3k.

4. OTHER STATEMENTS

- a.  Defendant vacated the premises on (date):
b.  The fair rental value of the premises alleged in the complaint is excessive (explain below or on form MC-025):
 Explanation is on MC-025, titled as Attachment 4b.
c.  Other (specify below or on form MC-025 in attachment):
 Other statements are on MC-025, titled as Attachment 4c.

5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.
b. costs incurred in this proceeding.
c.  reasonable attorney fees.
d.  that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.
e.  Other (specify below or on form MC-025):
 All other requests are stated on MC-025, titled as Attachment 5e.

6. Number of pages attached: \_\_\_\_\_

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code §§ 6400—6415)

7. (Must be completed in all cases.) An unlawful detainer assistant  did not  did for compensation give advice or assistance with this form. (If defendant has received any help or advice for pay from an unlawful detainer assistant, state):

- a. Assistant's name: b. Telephone No.:
c. Street address, city, and zip code:
d. County of registration: e. Registration No.: f. Expires on (date):

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

Signature lines for defendant and attorney with labels: (TYPE OR PRINT NAME), (SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:

Signature lines for defendant with labels: (TYPE OR PRINT NAME), (SIGNATURE OF DEFENDANT)