Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 28, 2013

Title
Unlawful Detainer: Answer to Complaint

Rules, Forms, Standards, or Statutes Affected
Revise form UD-105

Recommended by
Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair
Hon. Patricia M. Lucas, Vice-Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2014

Date of Report
March 25, 2013

Contact
Alan Wiener, 818-558-3051
alan.wiener@jud.ca.gov

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 abuse of an elder or a dependent adult. 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.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 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 the form. Most recently and pertinently, on October 28, 2011, 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.

Rationale for Recommendation

The proposed revisions to form UD-105 will satisfy a legislative mandate in Senate Bill 1403 (Yee) *(http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1403 &search_ keywords=),* which amended section 1161.3 of the Code of Civil Procedure, effective January 1, 2013. The revisions are minor and would incorporate text that is used repeatedly in the amended section.

Code of Civil Procedure section 1161.3 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 constituted domestic violence, sexual assault, or stalking. The 2010 legislation also required the Judicial Council to develop a new form or revise an existing form that may be used to assert the grounds set forth in section 1161.3 as an affirmative defense to an unlawful detainer action.

Effective January 1, 2012, upon the recommendation of the Civil and Small Claims Advisory Committee, the Judicial Council revised form UD-105 to include a new, optional affirmative defense (item 3i) stating: "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."

Effective January 1, 2013, the Legislature amended Code of Civil Procedure 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 or failing to renew a tenancy. The amended section also requires that the Judicial Council, on or before January 1, 2014, develop a new form or revise an existing form that may be used by a party to assert these new grounds as an affirmative defense to an unlawful detainer action.

To carry out this new legislative mandate, the Civil and Small Claims Advisory Committee recommends that the Judicial Council approve the following revisions to item 3i of form UD-105:

> 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, 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.)*

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

Comments, Alternatives Considered, and Policy Implications

The Civil and Small Claims Advisory Committee recommends that the Judicial Council approve revised form UD-105 without circulation for comment, pursuant to rule 10.22 of the California Rules of Court,[1] 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.

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 negligible expenses replacing unused copies of the outdated form when the revised form becomes effective.

[1] 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.

Relevant Strategic Plan Goals and Operational Plan Objectives

The revision of form UD-105 will support Goal I, Access, Fairness, and Diversity, by helping to make unlawful detainer proceedings understandable and accessible, particularly to self-represented litigants.

Attachments

1. Form UD-105, at pages 5–6

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: STATE BAR NO.: FIRM NAME: ADDRESS: CITY: STATE: ZIP CODE: E-MAIL ADDRESS *(Optional)*: TELEPHONE NO.: ATTORNEY FOR *(Name)*: FAX NO. *(Optional)*:	***FOR COURT USE ONLY*** **DRAFT 2.11.13** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
ANSWER—UNLAWFUL DETAINER	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, ~~or~~ 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.)*
   j. ☐ Other affirmative defenses are stated in item 3k.

Form Approved for Optional Use
Judicial Council of California
UD-105 [Rev. January 1, 2014]

Civil Code, § 1940 et seq.;
Code of Civil Procedure, § 425.12, § 1161 et seq.
www.courts.ca.gov

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.)

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DEFENDANT OR ATTORNEY)

_____ ▶ _____
(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:

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DEFENDANT)