



CA Evictions: How to Serve an Eviction Notice

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In California, one of three notices typically starts every eviction process. For the notice to withstand challenge, the landlord must serve the notice according to the rules established in Code of Civil Procedure section 1162, and the court will hold the landlord strictly to the code.

The notices covered by this type of service include the following:

- A three-day notice to pay or quit. (Used for evictions under Code of Civil Procedure section 1161, paragraph 2. [nonpayment])
- A three-day notice to fix or quit. (Used for evictions under Code of Civil Procedure section 1161, paragraph 3. [failure to follow terms of the lease])
- A three-day notice to quit. (Used for evictions under Code of Civil Procedure section 1161, paragraph 4. [tenants commit waste, nuisance, or criminal use.])
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Rules for Service

For any of the notices named above, the landlord must follow the rules in the Code of Civil Procedure section 1162.

Personal Service. The landlord may serve notice upon the tenant personally.

Substituted Service at Home. If the tenant is not home, but a person of suitable age and discretion answers the door, you can give the notice to that person and mail a copy to the tenant.

Substituted Service at Work. If the tenant is not at work, but a person of suitable age and discretion is at their place of work, then you can give the notice to that person and mail a copy to the tenant. Both actions must occur.

Service by Posting. Suppose the landlord cannot find a person of suitable age at the person's residence nor their place of business. In that case, the landlord may:

1. Post the notice in a conspicuous place where the tenant is sure to see it.
2. Give the notice to a person of any age living in the unit, if such a person answers the door.
3. Mail a copy of the notice to the tenant through the US Mail.



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In this situation, leaving a copy with the person residing there is optional. The code allows you to skip this step if no person answers the door. However, the other two steps are mandatory.

What becomes interesting is the condition under which the landlord may use the “post and mail” method. While the landlord can use substituted service and personal service at any time, the “post and mail” method is limited to only a specific circumstance.

Posted Service

Tenants can challenge the “post and mail” service if the landlord does not attempt service at both work and home.

In 1989, the court highlighted that a landlord may use the first three methods of service (personal service and two types of substituted service) at any time, but the “post-and-mail” procedure only applies after satisfying the required condition:

“[I]f the tenant is absent from his place of residence and from his place of business, then service may be effectuated by leaving the notice with some suitable person at either place. When no such person is available, then the post-and-mail procedure of subdivision 3 applies.” (Hozz v. Lewis (1989) 215 Cal.App.3d 314, 317, emphasis in original.)

In that 1989 case (Hozz v. Lewis), the landlord attempted service at the tenant’s home. Then, he used the “post and mail” method when no one answered the door. The landlord never tried to serve the tenant at the tenant’s place of work.

The tenant complained in court and almost won. But, the landlord explained that the only reason that he did not attempt to serve the tenant at work was that the tenant led him to believe that he worked from home and did not have a separate place of business. Thus, an attempted service at home was also attempted service at work, in this specific case. The court held that because the landlord relied on the tenant’s statements to believe the tenant had no place of business, the landlord was excused from having to first attempt service at the tenant’s work before “posting and mailing.”

In 2013, the court wrote the following:



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“[We have] noted that this code section does not require a showing of reasonable diligence in attempting personal service before utilizing the substituted service provisions, as required in Code of Civil Procedure section 415.20, subdivision (b). (Id. at p. 6, 167 Cal.Rptr. 353.) It does require, however, ‘that if the tenant cannot be located for personal service that the person making this substituted service first determine either that the tenant’s “... place of residence and business cannot be ascertained, or that a person of suitable age or discretion there cannot be found” ’.”

(The Bank of New York Mellon v. Preciado (2013) 224 Cal.App.4th Supp. 1, 7.)

The critical point here is this: You don’t have to show “reasonable diligence” if you indicate on your verified proof of service that you attempted service at both the place of work and residence before using “post and mail.”

If you need help . . .

If you need help evicting residential tenants in Kern County, call Jared R Clemence at Coleman & Horowitz. (Call 661-325-1300.)

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