

AMENDED IN ASSEMBLY MAY 2, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2044**

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**Introduced by Assembly Member Wagner**

February 23, 2012

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An act to amend Section ~~415.46~~ 659 of the Code of Civil Procedure, relating to ~~service of process~~ *civil actions*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2044, as amended, Wagner. ~~Service of process: unlawful detainer. Civil actions: motion for a new trial.~~

*Existing law requires the party intending to move for a new trial to file a notice of intention to move for a new trial, as specified, either before the entry of judgment or within 15 days of the date of mailing notice of entry of judgment by the clerk of the court or service upon him by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest.*

*This bill would require that, when filing the motion before the entry of judgment, the filing be done after the decision is rendered. The bill would also make technical, nonsubstantive changes.*

~~Existing law establishes a procedure for service of process in actions for unlawful detainer with respect to occupants, as specified, which if complied with prohibits any occupant from objecting to enforcement of the judgment, including with respect to service of a prejudgment claim of possession. Existing law provides that among the methods of service, a prejudgment claim of right to possession may also be served on any person who appears to be or who may claim to have occupied the premises at the time of the filing of the action.~~

~~This bill would, in addition, provide that service of a prejudgment claim of right to possession may be served on any person who is over 18 years of age and apparently left in charge of the premises.~~

~~Existing law requires that service of the prejudgment claim of right to possession be effected, as specified, by a marshal, sheriff, or registered process server.~~

~~This bill would provide that service may also be effected by a person who is at least 18 years of age and not a party to the action. The bill would make additional conforming changes.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 659 of the Code of Civil Procedure is  
2 amended to read:

3     659. (a) The party intending to move for a new trial must file  
4 with the clerk and serve upon each adverse party a notice of his  
5 or her intention to move for a new trial, designating the grounds  
6 upon which the motion will be made and whether the same will  
7 be made upon affidavits or the minutes of the court or both, either:

8     ~~1. Before~~

9     (1) After the decision is rendered and before the entry of  
10 judgment; ~~or.~~

11    ~~2. Within~~

12    (2) Within 15 days of the date of mailing notice of entry of  
13 judgment by the clerk of the court pursuant to Section 664.5, or  
14 service upon him or her by any party of written notice of entry of  
15 judgment, or within 180 days after the entry of judgment,  
16 whichever is earliest; provided, that upon the filing of the first  
17 notice of intention to move for a new trial by a party, each other  
18 party shall have 15 days after the service of ~~such~~ that notice upon  
19 him or her to file and serve a notice of intention to move for a new  
20 trial.

21    Said

22    (b) That notice of intention to move for a new trial shall be  
23 deemed to be a motion for a new trial on all the grounds stated in  
24 the notice. The time ~~above~~ specified in paragraphs (1) and (2) of  
25 subdivision (a) shall not be extended by order or stipulation or by  
26 those provisions of Section 1013 of this code which that extend

1 the time for exercising a right or doing an act where service is by  
2 mail.

3 ~~SECTION 1. Section 415.46 of the Code of Civil Procedure~~  
4 ~~is amended to read:~~

5 ~~415.46. (a) In addition to the service of a summons and~~  
6 ~~complaint in an action for unlawful detainer upon a tenant and~~  
7 ~~subtenant, if any, as prescribed by this article, a prejudgment claim~~  
8 ~~of right to possession may also be served on any person who~~  
9 ~~appears to be or who may claim to have occupied the premises at~~  
10 ~~the time of the filing of the action or is over 18 years of age and~~  
11 ~~apparently left in charge of the premises. Service upon occupants~~  
12 ~~shall be made pursuant to subdivision (e) by serving a copy of a~~  
13 ~~prejudgment claim of right to possession, as specified in~~  
14 ~~subdivision (f), attached to a copy of the summons and complaint~~  
15 ~~at the same time service is made upon the tenant and subtenant, if~~  
16 ~~any.~~

17 ~~(b) Service of the prejudgment claim of right to possession in~~  
18 ~~this manner shall be effected by a marshal, sheriff, or registered~~  
19 ~~process server or in the manner described in Section 414.10.~~

20 ~~(c) When serving the summons and complaint upon a tenant~~  
21 ~~and subtenant, if any, the marshal, sheriff, registered process server,~~  
22 ~~or other authorized server pursuant to Section 414.10 shall make~~  
23 ~~a reasonably diligent effort to ascertain whether there are other~~  
24 ~~adult occupants of the premises who are not named in the summons~~  
25 ~~and complaint by inquiring of the person or persons who are being~~  
26 ~~personally served, or any person of suitable age and discretion~~  
27 ~~who appears to reside upon the premises, whether there are other~~  
28 ~~occupants of the premises.~~

29 ~~If the identity of an occupant is disclosed to the officer or process~~  
30 ~~server and the occupant is present at the premises, the officer or~~  
31 ~~process server shall serve that occupant with a copy of the~~  
32 ~~prejudgment claim of right to possession attached to a copy of the~~  
33 ~~summons and complaint. If personal service cannot be made upon~~  
34 ~~that occupant at that time, service may be effected by (1) leaving~~  
35 ~~a copy of a prejudgment claim of right to possession attached to~~  
36 ~~a copy of the summons and complaint addressed to that occupant~~  
37 ~~with a person of suitable age and discretion at the premises, (2)~~  
38 ~~affixing the same so that it is not readily removable in a~~  
39 ~~conspicuous place on the premises in a manner most likely to give~~

1 actual notice to that occupant, and (3) sending the same addressed  
2 to that occupant by first-class mail.

3 ~~In addition to the service on an identified occupant, or if no~~  
4 ~~occupant is disclosed to the officer or process server, or if~~  
5 ~~substituted service is made upon the tenant and subtenant, if any,~~  
6 ~~the officer or process server shall serve a prejudgment claim of~~  
7 ~~right to possession for all other persons who may claim to occupy~~  
8 ~~the premises at the time of the filing of the action by (1) leaving~~  
9 ~~a copy of a prejudgment claim of right to possession attached to~~  
10 ~~a copy of the summons and complaint at the premises at the same~~  
11 ~~time service is made upon the tenant and subtenant, if any, (2)~~  
12 ~~affixing the same so that it is not readily removable in a~~  
13 ~~conspicuous place on the premises so that it is likely to give actual~~  
14 ~~notice to an occupant, and (3) sending the same addressed to “all~~  
15 ~~occupants in care of the named tenant” to the premises by first-class~~  
16 ~~mail.~~

17 ~~The person serving process shall state the date of service on the~~  
18 ~~prejudgment claim of right to possession form. However, the~~  
19 ~~absence of the date of service on the prejudgment claim of right~~  
20 ~~to possession does not invalidate the claim.~~

21 ~~(d) Proof of service under this section shall be filed with the~~  
22 ~~court and shall include a statement that service was made pursuant~~  
23 ~~to this section. Service on occupants in accordance with this section~~  
24 ~~shall not alter or affect service upon the tenant or subtenant, if any.~~

25 ~~(e) If an owner or his or her agent has directed and obtained~~  
26 ~~service of a prejudgment claim of right to possession in accordance~~  
27 ~~with this section, no occupant of the premises, whether or not that~~  
28 ~~occupant is named in the judgment for possession, may object to~~  
29 ~~the enforcement of that judgment as prescribed in Section 1174.3.~~

30 ~~(f) The prejudgment claim of right to possession shall be made~~  
31 ~~on the following form:~~



I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

- 1. My name is (specify):
- 2. I reside at (street address, unit no., city and ZIP code):
- 3. The address of “the premises” subject to this claim is (address):
- 4. On (insert date): , the landlord or the landlord’s authorized agent filed a complaint to recover possession of the premises. (This date is in the accompanying Summons and Complaint.)
- 5. I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
- 6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
- 7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).
- 8. I was not named in the Summons and Complaint.
- 9. I understand that if I make this claim of possession, I will be added as a defendant to the unlawful detainer (eviction) action.
- 10. (Filing fee) I understand that I must go to the court and pay a filing fee of \$  or file with the court “Application for Waiver of Court Fees and Costs.” I understand that if I don’t pay the filing fee or file the form for waiver of court fees within 10 days from the date of service on the form (excluding court holidays), I will not be entitled to make a claim of right to possession. I also understand that I will have 5 days (excluding court holidays) to file a response to the Summons and Complaint after I file this claim of possession.

NOTICE: If you fail to file this claim, you will be evicted without further hearing.

11. Rental agreement. I have (check all that apply to you):

- a.  an oral rental agreement with the landlord.
- b.  a written rental agreement with the landlord.
- c.  an oral rental agreement with a person other than the landlord.
- d.  a written rental agreement with a person other than the landlord.
- e.  other (explain):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

~~WARNING: Perjury is a felony punishable by imprisonment in the state prison.~~

Date:

.....  \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF CLAIMANT)

~~NOTICE: If you file this claim to possession, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.~~

NOTICE TO OCCUPANTS

~~YOU MUST ACT AT ONCE IF ALL THE FOLLOWING ARE TRUE:~~

- ~~(1) You are not named in the accompanying Summons and Complaint.~~
- ~~(2) You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed.~~
- ~~(3) You still occupy the premises.~~

~~You can complete and SUBMIT THIS CLAIM FORM within 10 days from the date of service (on the form) at the court where the unlawful detainer (eviction) complaint was filed.~~

~~— If you do not complete and submit this form (and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee), YOU WILL BE EVICTED.~~

~~— After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to occupy the premises will be decided by the court. If you do not file this claim, you will be evicted without a hearing.~~

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