

LANDLORD/TENANT ANSWER IN PERSON FACT SHEET (CIV-LT-91)



#1 and 2: IMPROPER SERVICE

Defense # 1 says: "Respondent did not receive a copy of the Petition and Notice of Petition." Defense # 2 says: "Respondent received the Petition and Notice of Petition, but service was not correct as required by law. These defenses are called "improper service."

A nonpayment case must be started by someone sent by the landlord or owner serving a notice of petition and a petition on the tenant(s). Service of the papers means giving a copy of the papers to the tenant(s). If you did not get a copy of the notice of petition and petition, you may have defense #1.

The notice of petition and petition must be given to the tenant exactly as the law says or the case is no good and you may have defense #2. If you do not make this defense when you first answer, you may not be able to make the defense later on.

There are only three ways to properly deliver or "serve" a notice of petition and petition in a nonpayment case.

1. **Personal Delivery:** You are given a copy of the notice of petition and petition (by someone who is 18 years old or older and not the landlord or owner), or
2. **Substituted Service:** A copy of the notice of petition and petition is given to someone of "suitable age and discretion," who lives or works in your apartment, not just someone who happens to be there (this person does not have to be an adult, but it should not be a small child). By the next weekday, except for certain holidays, two other copies of the notice of petition and petition must be mailed to you. One copy mailed by certified mail and the other mailed by regular mail.
3. **Conspicuous Service:** The person serving the notice of petition and petition must come to your apartment at least two times to try

to give those papers to you in person or to someone who lives or works at your apartment. Those two attempts must be at different times of the day, usually one time during working hours and one time during when people don't work. After those two attempts, the person serving the notice of petition and petition can tape one copy to your door or put it under your door. By the next day, excluding weekends and certain holidays, two other copies of the notice of petition and petition must be mailed to you. One copy mailed by regular mail and one copy mailed by registered or certified mail.

If you did not get both the notice of petition and petition in any of those ways, this is a defense to your case and can be included in your answer. When you go to court, tell the Judge or Court Attorney that you were not served properly. The judge can decide to set a date for a hearing, called a "traverse" hearing, to decide whether the service of the court papers was correct.

At the traverse hearing, the landlord's process server (the person who delivers the legal papers) may be asked to tell under oath how he or she gave you the court papers. You will have the right to ask the process server questions, to testify (talk about it) yourself, and to call witnesses (people who saw) to explain that the papers were not delivered properly.

If the judge says that the papers were not served properly, the case will be dismissed "*without prejudice*." This means that the case is over. But, the landlord can start another case by giving you a new set of papers. If you receive another set of papers, you must come to court and answer the new notice of petition and petition.