



Superior Court of California
County of Shasta

To: Attorneys and Parties in Landlord-Tenant actions:

The following information is merely intended to alert those who appear on the unlawful detainer calendar of the general principles of law with regard to costs and attorney fees. It is not intended as legal advice, or a predetermination of any specific unlawful detainer case that may be heard in the Shasta County Superior Court.

Those procedures set forth in CRC Rule 3.1700, relating to claiming costs, apply to a request for costs in connection with non-default unlawful detainer judgments. As stated in the Rutter Group Treatise, Landlord-Tenant:

(3) [9:378] Costs award procedure: The unlawful detainer judgment simply determines who is the prevailing party entitled to costs. Except as to attorney fees awarded as costs (see ¶ 9:398 ff.), the amount awardable is handled thereafter through the CRC “memorandum of costs” and “motion to tax costs” procedures (CCP § 1034; CRC 3.1700, 3.1702 & 3.200):

...

1) [9:380.1] Mandatory procedure: The memorandum of costs procedure, though not “jurisdictional,” is mandatory. Failure to file a memorandum of costs (or “cost bill”) within the requisite time period waives the right to recover costs of suit. [Sanabria vs. Embrey (2001) 92 CA4th 422, 426, 111 CR2d 837, 839; Hydratec, Inc. v. Sun Valley 260 Orchard & Vineyard Co. (1990) 223 CA3d 924, 928–929, 272 CR 899, 901–902 – trial court judgment erroneously determining each party bears its own costs does not obviate prevailing party’s obligation to timely file cost bill (issue cannot be raised for first time on appeal)]

Likewise, the law governing an award of attorney fees in connection with a limited jurisdiction action also applies to unlawful detainer cases. Again, the Rutter Group Treatise, Landlord-Tenant states:

2) [9:398.2] Fees pursuant to contract or law: Attorney fees allowable as costs pursuant to contract or “law” (CCP § 1033.5(a)(10)(A) & (C)) “shall be fixed” upon a noticed motion or entry of default judgment, unless the parties stipulate otherwise. [CCP § 1033.5(c)(5) (emphasis added); see Allstate Ins. Co. v. Loo (1996) 46 CA4th 1794, 1797–1798, 54 CR2d 541, 542]

a) [9:398.3] Cost bill alone ordinarily insufficient: The legislative history indicates CCP § 1033.5(c)(5) is meant to establish the exclusive procedure for claiming contractual attorney fees as costs (see Stats. 1990, Ch. 804, § 2). Given that clear directive, current authority concludes contractual attorney fees are not awardable upon the mere filing of a costs memorandum—a noticed motion is mandatory (unless the parties otherwise stipulate). [See Lee v. Wells Fargo Bank, N.A. (2001) 88 CA4th 1187, 1198, 106 CR2d 726, 735; Russell v. Trans Pac. Group (1993) 19 CA4th 1717, 1725–1726, 24 CR2d 274, 279–280]