



PERFECTING NOTICE

When it comes to evicting a resident, it's easy to make a small mistake that can lose you the case. Follow these 10 tips to ensure a proper eviction notice.

ONE CAN EASILY argue the most important document in the eviction process is the document that starts it all: the notice to vacate. Property owners can't go forward without it and every owner wants to be able to evict problem residents without delay. One of the biggest problems owners have with eviction notices is that when they unknowingly provide a faulty notice, they don't discover there is a problem until three to four weeks later in the justice court. Even worse, owners could prevail in the justice court, but then find out there is a problem with the notice in the county court, six to eight weeks after the notice was originally given.

Here are 10 tips regarding giving effective and efficient notices to vacate. Please keep in mind this list was developed from actual problems that have occurred, so if you have adopted a "this will never happen to me" attitude, get over it, at least while you read this article. I suggest owners and property managers alike use this as a checklist whenever pursuing an eviction action.

1. State all defaults in the notice.

It's a good ideal to list *all* known defaults in the notice. If a resident has failed to pay rent, the reasons should be stated in the notice. If the resident has been involved in illegal drug activity, had unauthorized occupants or caused disturbances with excessive noise or traffic, those reasons should be stated.

It is also beneficial to identify the paragraphs of the lease that have been violated. This will prepare you for trial and it gives proper notice to the resident as to why he or she is being evicted.

2. Address the notice to the proper persons.

When an eviction is based on a written residential case, the Rules of Civil Procedure states the owner must name all residents obligated under the lease, residing in the unit, as defendants in the petition. No judgment or writ of

possession may be issued or executed against a resident obligated under a lease and residing at the premises if they are not named in the petition and served with a citation.

The notice must list the same residents you intend to evict in the petition. Consequently, since the petition has certain requirements, the same persons must be identified and served with the notice. Remember this only includes persons who are responsible for lease obligations. In other words, do not include persons listed as occupants who did not sign the lease or unauthorized occupants.

3. Be sure to identify the number of days the resident has to vacate.

The notice needs to be clear with respect to how many days the resident has to vacate. The notice must be dated and state when the resident is requested to vacate. Pursuant to the Property Code, the notice is calculated from the day the notice is delivered. The Property Code provides an owner must provide a resident that defaults at least a three-day written notice to vacate the premises before the owner files an eviction suit, unless the parties contracted for a shorter or longer notice period in the lease.

Section 32.2 of the TAA lease allows a 24-hour notice to vacate. If the notice states the resident is to vacate within a certain number of days after the date of the notice, the notice needs to be delivered on the date of the notice.

4. The demand for possession must be unconditional.

While the notice includes the defaults, it is not to be used as a notice to cure. Rather, the notice must be an unconditional demand for possession as a result of the default.

The Property Code provides if the owner gives a written notice or reminder that rent is due and unpaid before the notice to vacate is issued, the owner may include in the notice to vacate a demand that the resident pay the delinquent rent or vacate the premises. In other

words, if you provide a "pay or quit" notice, you will have to produce two notices at the time of trial, instead of just one notice.

If you want to work with the resident with respect to paying the amount due after giving notice to vacate, you are free to do so without filing the eviction suit.

5. Deliver the notice in accordance with the law.

The Property Code provides the notice shall be given in person or by mail at the premises. Owners and managers may personally deliver a notice to the resident or any person residing in the unit who is 16 years of age or older, or personally deliver a notice to the premises by affixing the notice to the inside of the main entry door. Notice by mail can be sent via regular mail, registered mail or certified mail with return receipt requested.

One common issue often brought up by residents at trial is that they did not receive the notice to vacate. Receipt by the resident is not required; however, following a proper a method of delivery is mandatory. If the notice is issued in person, keep a record should of whom the notice was delivered to. Although the law permits giving the notice to any person residing in the unit who is 16 years of age or older, the better practice would be to personally deliver the notice to the resident obligated under the lease. If the resident is not at home, the notice can be delivered by affixing the notice to the inside of the main entry door. In other words, the notice can't be delivered to an unauthorized occupant. The notice cannot be left on the dining room table nor slipped through a crack in the door.

6. If posted on the outside of the door, proper steps must be followed.

As an alternative to delivering the notice in person or by mail as indicated above, the owner may deliver the notice by securely affixing the notice to the *outside* of the main entry door.

However, certain conditions must be met.

The notice must be in a sealed envelope with the resident's name and address printed in all capital letters with the words "IMPORTANT DOCUMENT" or substantially similar language. No later than 5 p.m. on the same day the notice is posted on the outside of the door, it must be deposited in the mail in the same county as the premises. Further, the owner must reasonably believe that harm to any person would result from a personal delivery to the resident or a person residing in the unit or from a personal delivery to the premises by affixing the notice on the *inside* of the main entry door.

If you elect to post the notice on the outside of the door, the owner should have someone prepared to testify at the eviction trial that there was a reasonable belief harm would have come to the person if they personally delivered the notice. If the eviction case is otherwise about a threatening resident, this may not be difficult. However, if the case is a non-payment of rent case, proof must be provided on both the non-payment issue and the harm issue.

7. Keep a copy of the delivered notice.

Proving the notice was given will be an important part of the eviction trial. A copy must be kept of whatever notice is delivered. If you iden-

tify how the notice was delivered on the notice itself, the delivery method must be true and correct. Don't identify the method before the notice is delivered. If that method is not available (such as delivering the notice to the resident, who may not be home), you may have inaccurate information on the notice that was affixed to the inside of the main entry door. This could present credibility issues at the time of trial if the resident denies getting the notice.

8. Be careful if money is collected after giving the notice in a non-payment case.

In a non-payment of rent case, if payment is made after the notice is given, you want to have a plan before accepting the payment. If it is a partial payment, you could either decline the payment or accept the payment in exchange for a letter telling the resident that it is a partial payment only and you are continuing to proceed with the eviction action (if that's what you intend). If the payment is in full, you may accept the money and refrain from going forward with the eviction action.

9. Have the person delivering the notice ready to testify in court.

Since the notice is such an important part of the eviction process, you want to be sure that

you are able to prove delivery by having the person who made the delivery to testify in court. If the delivery of the notice is not challenged by the resident, the court may not require any testimony; however, it is always better to be safe than sorry.

10. File the eviction in a timely fashion.

Be sure to file the eviction action promptly after the notice period has expired. If the notice to vacate is delivered and it takes weeks or even months to file the eviction, in all likelihood, you will need a new notice before filing that eviction. While there is no legal expiration of a notice to vacate, if you delay, there may be an argument that you have waived your right to pursue the action as a result of the default. This may depend upon the type of default and what happened between the notice and the filing of the petition. If there's too much delay, you are probably better off giving a new notice listing current defaults rather than trying to pursue the action based on older conduct.

Due to the importance of the notice to vacate, it's a good idea to review your policies to be sure there are no unnecessary surprises once you get to court. Hopefully, these tips help! 🐷

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