



IT'S ALL ABOUT THE DELIVERY

Be careful when delivering a notice to vacate.

FAMED FILM DIRECTOR Martin Scorsese once said about comedian Don Rickles, "There's something truly artful about his delivery." What Mr. Scorsese didn't know was that Rickles had something in common with a notice to vacate: A notice to vacate is also all about the delivery.

Imagine this: You have received a number of complaints about one of your residents. Nothing dangerous. Nothing criminal. Apparently, this particular resident loves to let loose on weekends. Loud music seems to always be coming from his apartment home on Friday and Saturday nights into the early morning hours. He then constantly piles up trash (mostly beer bottles) outside his door, which your maintenance man has to pick up each Monday morning.

The Monday morning complaints about noise and the trash have become a regular weekly occurrence. You've tried everything! You've talked to the resident, sent the resident notices of lease violations and offered to transfer the resident to another unit where the noise might not be so bothersome. Nothing has worked! The trouble is the resident likes to argue. It seems the resident is a third-year law student at South Texas College of Law. He loves to debate. However, you are losing residents because of his conduct. You have no choice but to give a notice to vacate.

You fill out the standard TAA notice to vacate form, but you are sick and tired of talking to this resident about noise and you really don't want to get into another argument with him, which takes a lot of time and energy. To avoid an argument, you put the notice in an envelope and attach the notice to the outside of the door.

When you get back to the office, you fill out the notice to vacate delivery boxes at the bottom of the form. You check the box stating:

Securely affixed to the outside of the

dwelling's main entry door in a sealed envelope per Texas Property Code Section 24.005.

After the appropriate number of days, you file an eviction petition with the appropriate Justice of the Peace court. Of course, the resident shows up at court and argues his case. He says all he was doing was having some fun. Although the judge feels sorry for the resident, the judge grants you judgment in your favor. You win, but wait, there's more ...

With an eviction on his record, the resident cannot get housing he likes elsewhere. He appeals the judgment to the county court downtown. Although the resident understands that he may lose again, he wants to delay the proceeding because he has nowhere else to live.

Since you have witnesses to the disturbances, your maintenance man agreed to testify about the weekly trash cleanup and you won in the JP court, you can't imagine any outcome other than a win in the county court! You go to court poised, confident and prepared. No way to lose, but wait, there's more ...

The resident shows up to court ready to argue. But the resident has a strange looking older fellow with him. You don't know who this person is. He then says hi to the judge and he and the judge start talking. Apparently, they are old friends from law school, and the old guy with your resident is his law school professor. You hear them talking about the case, and much to your surprise, they are not talking about noise disturbances or trash. They are talking about your notice to vacate.

The judge looks at you and says he is sorry, but you lose. The judge thanks you for coming down and wishes you well.

What the heck just happened? You didn't

Delivery of the notice to vacate is an integral part of the eviction process. Without proper delivery, you run the risk of losing the case. If you lose, you may need to start over. If you lose in the JP court, you've lost about four weeks. If you lose in the county court, **you may lose up to eight weeks or more.**

get to make your case, present your witnesses or display the sample beer bottle you took from the pile of trash the previous Monday morning.

Let Me Explain What Might Have Happened

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It's easy to properly deliver the notice, don't make this an issue.

1. The usual way of delivering the notice to vacate:

Section 24.005(f) of the Texas Property Code provides that the notice to vacate shall be given in person or by mail to the unit in the following ways:

- 1) **In person** by personally delivering the notice to the resident or any person residing at the unit who is 16 years of age or older;
- 2) **In person** by personally delivering the notice to the unit and affixing the notice *on the inside of the main entry door of the unit*;
- 3) **By mail** through regular mail to the unit;
- 4) **By mail** through registered mail to the unit; or
- 5) **By mail** through certified mail, return receipt requested to the unit.

2. The alternative notice (only to be used when certain conditions are and can be met):

Pursuant to Texas 24.005(f-1) of the Property Code, as an alternative to the procedure set forth above, an owner may deliver the notice by *securely affixing the notice to the outside of the main entry door*, but only if the following conditions are met:

1) The notice is placed in a sealed envelope on which is written the resident's name, address, and in all capital letters, the words "IMPORTANT DOCUMENT" or substantially similar language;

2) Not later than 5 p.m. of the same day as the notice is delivered, depositing the notice in the mail in the same county in which the unit is located; and

3) One of the following additional conditions is met:

a. The unit has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the owner from entering the unit to affix the notice on the inside of the main entry door; or

b. The owner reasonably believes that harm to any person would result from

personally delivery to the resident or a person residing in the unit or from personally deliver to the unit by affixing the notice on the inside of the main entry door.

In most cases, the apartment home is served by a mailbox. Consequently, the other conditions must be met in order to serve the notice on the outside of the door. In other words, in most cases, you will need to be able to show that you had a reasonable belief that harm would come to you if you personally served the notice. This could either be under circumstances when there is a dangerous animal in the apartment home or when the resident's prior conduct causes you concern.

A common mistake has been that a notice is placed on the outside of the door without there being a dangerous animal or a dangerous resident. In most cases, you will not have the right to post the notice on the outside of the door if the resident fails to pay rent or violates a rule that would not reasonably be re-

If you are evicting a resident for dangerous behavior, serving the notice on the outside of the door may be a valuable option. If your eviction is not one where circumstances warrant delivery on the outside, you run the risk of losing. **You always want to avoid a situation** where you fail to properly deliver the notice and would be required to start over after several weeks of an eviction process.

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Preparation is the key to success in any eviction. Be sure when you go forward, you are prepared to testify about the proper delivery of the notice to vacate. This will save you time and money in the eviction process. 🏠

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