

EVICCTIONS

Notices enclosed are divided into two categories: general notices and legal notices. General notices, such as: Rental Unit Entry, Permission to Enter, Expiration of Lease, Past Due and Intent to Vacate and other general notices are useful property management tools. There is not a set way in which general notices are to be filled out and served. Having a good management policy is to put everything in writing and keep a paper trail and having these general notices is a great way to help you do this.

The Landlord/Tenant Act prescribes legal notices. At the top of each notice is the section of the Revised Code of Washington (RCW), which references the notice. Laws are very specific about what certain notices must state, what the time periods are and how the notices are served. Failure to provide a proper notice and/or service will make the notice invalid and give the tenant a defense against an unlawful detainer action. So it is very important that you take extreme care in filling out and delivering legal notices correctly.

The first steps in the chain of events leading to an eviction are the 3-day, 10-day and 20-day notices. 3-day and 10-day notices are worded quite strongly at the bottom, as these are served when the tenant has either violated the rental agreement or is delinquent in paying rent. If you want to take this a step further you may wish to highlight the last paragraph. For the 20-day notice there may or may not be a violation, however, the wording at the bottom of this notice is not as strong. 30-day notices are for rent increases and changes in terms and conditions on the rental agreement. The form and method of service is not as specific for the 30-day notice. Basically the 30-day notice must be in writing and delivered 30 days prior to the increase of rent or change in terms. Abandonment notice must be followed by a specific procedure. Detailed instructions are given for all the legal notices in this handout.

Even though you do your best to screen and select the ideal tenant for your rentals, situations do arise and your ideal tenant can turn into a bad tenant. At some point you are likely to have a problem tenant, either not paying rent or adhering to your rental agreement. Taking immediate actions as soon as a problem arises is most important. In the case of non-payment of the rent, each day a tenant stays in your rental unit costs you money in lost rent. If you are renting your rental unit for \$900, it costs you \$30 per day. Typically the longer you wait the harder the past due rent becomes to collect.

Only one legal process exists for getting a problem tenant out of your rental unit. Locking your tenants out of the unit, moving the tenant's belongings into the street, shutting off utilities, selling the tenant's belongings in order to make up for their past rent, removing doors and windows "for repair" are all things that are strictly unlawful. You are not allowed to take actions in this manner. Any of these actions or others, which interfere with the tenant's "quiet enjoyment" of the property, can lead to fines and court actions against you. Be sensible and professional with problem tenants, you must learn to keep your feelings and ego in control. Running a business is what you are doing so dealing with problem tenants and serving notices need to be looked at as if you are purely dealing with a business matter.

THE EVICTION PROCESS

In most cases, the proper service of a 3-day, 10-day or 20-day notice is the first step in the eviction process. If, after the statutory period of time, the tenant fails to vacate, pay rent or comply, he is guilty of unlawfully detaining your property by denying you the possession of it. The next step is to start a lawsuit, which will lead to the eviction of the tenant and restore possession to you. The lawsuit is called an unlawful detainer action. Note that in most cases, the unlawful detainer action cannot be started until the tenant has been given the required legal notice. In the state of Washington, an unlawful detainer action is complex and has several procedural requirements. We recommend hiring a landlord service or an attorney who specializes in evictions to handle the unlawful detainer.

Unlawful detainer lawsuits start with the preparation and service of a summons and complaint. The complaint states why the tenant should be evicted and the summons directs the tenant to respond to the complaint within a specified period of time. If the tenant does not respond, the landlord will obtain a default judgment from the court. Typically the tenant does not respond, particularly in the case of non-payment of rent.

The summons and complaint is filed with the clerk of the superior court. If the tenant does not appear in court or appears but does not establish a legal defense, the court will issue a writ of restitution. This writ is an order directing the county sheriff to appear at the property and keep the peace while the tenant and the tenant's possessions are physically removed from the property. Often, along with the writ the landlord will also receive a judgment against the tenant for any damages suffered, rent owing, court costs and attorney fees. Getting the judgment and collecting it are two different matters. If the tenant has to be evicted for non-payment, he most often does not have money or property to pay you with and is "judgment proof". In other words, he cannot pay, and your goal should be to remove him from the premises as soon as possible.

Enforcing the writ by forcing the tenant to leave the property is the sheriff's job. Since the sheriff is not responsible for moving the tenant's belongings, the landlord must arrange to have them removed. The landlord has the option of moving the tenant's possessions into storage rather than putting them out into the street, unless the tenant is present and specifically requests that his possessions be put on the street (public property).

Depending on the county where the property is located, the entire eviction process usually takes about 30 days. This is if a writ is issued on the first request and the case does not require a trial to determine the merits of a defense raised by the tenant. Rarely does an eviction go all the way to physical removal of the tenant and or their belongings from the property. The tenant usually leaves sometime prior to this happening. If the tenants are savvy to the eviction process, they may wait until the day before the sheriff shows up, but often the service of the summons and complaint will be enough to prompt the tenant to vacate.

NOTICES

3-DAY NOTICE TO PAY RENT OR VACATE. This notice is used in the case of non-payment or even partial payment of rent. Rent has to be due and owing to use this notice. It gives the ten-

ant two choices. First choice is to either pay the full amount of rent and other charges due or second choice is to vacate the premises. Talking to your tenant or sending a past due rent notice is advisable prior to serving the strongly worded 3-day notice.

During the 3-day period the landlord may refuse partial rent payment, but must accept full rent payment. If the landlord does accept partial payment it may render the notice void. The landlord may have to serve a new notice and start the clock over again on the 3-day time period. Once the statutory 3-day period has expired, the landlord may refuse full payment and proceed with the eviction process.

3-DAY NOTICE TO TERMINATE TENANCY. This notice is used in cases of waste, nuisance and illegal use of the rental unit by the tenant. It gives the tenant only one choice, which is; they have three days (or four days depending on the method of service) to move out. It is used only in extreme situations where the landlord is forced to take extreme measures. As a rule of thumb, this notice should only be served if the situation is life threatening or there is proven drug related activity taking place on the rental property.

Today drug dealing out of the rental unit is the most common reason for serving this notice. Drug dealing on the rental property provides clear grounds for serving this notice, provided that the drug related activity has been acknowledged and documented by the police. Other grounds for serving this notice might be a situation where one tenant threatens another with a firearm. Once again, you should have a police report to back up the notice. Waste (damage to the rental unit) is rarely used as grounds for serving this notice. The situation would have to be so severe that your rental unit is being destroyed.

Remember, when using this notice, the burden of proof is on you should the issue ever go to court. The tenant may contest the eviction. Make sure that the situation is very severe and warrants this notice; then make sure that you can prove your case if needed. Documentation and other witnesses who are willing to testify are essential if you are to prevail in court.

NOTICE TO COMPLY WITH THE RENTAL AGREEMENT. Commonly called the 10-day notice, it gives the tenant 10 days to comply with the conditions, rules, or regulations outlined in your rental agreement or vacate the rental. This notice is usually preceded by verbal and or written warnings for violations of the rental agreement. Types of violations may include loud parties, junk cars on the premises, extra occupants in the unit, garbage piled in the carport, etc. Quite often the tenants will take care of the problem and behave themselves once they are served this notice. If they do not, you may then proceed with an eviction after the expiration of the 10 days.

If your objective is to cause the tenant to vacate and he is on a month-to-month tenancy (outside the City of Seattle), a 20-day notice to terminate is more effective, particularly if you should be forced to proceed with an unlawful detainer action.

Accepting the rent during the 10 day period may constitute a waiver and invalidate the notice. If you are serious about proceeding with the eviction, refuse the rent unless the tenant fully complies with the notice within the 10 day period. Once again, if it should come to a legal action, the burden of proof is on you.

20-DAY NOTICE TO TERMINATE. With the notable exception of the City of Seattle, a periodic (month to month) tenancy can be terminated for any reason, except retaliation or discrimination. The tenant only has one choice when served this notice; he must move out by the end of the rental period. If your property is located inside the Seattle city limits, you must comply with Seattle's "Just Cause Ordinance". You may only issue a 20-day notice under very specific conditions in the City of Seattle. These conditions are outlined in this packet, however local laws are continually changing. Check the county and or city ordinances where your property is located to see if there are any ordinances, which affect the operation of your rental business.

This notice must be given at least 20 days prior to the end of the rental period. Do not count the day you serve the notice. If possible, it is a good practice to allow more than the mandatory 20 days. The notice may be served at anytime, provided it meets the 20 day minimum time frame.

FILLING OUT EVICTION NOTICES

HEADING (all notices): At the top of the notice, insert the names of all the tenants who originally signed the rental agreement. If there are additional occupants other than children, put their names on the notice also. If you do not know their names, or suspect that others are living in the unit, put the word "Et Al" on the notice. This is Latin for all others and commonly used on legal documents. Write out the names in full, i.e., Edward B. Smith and Harriet L. Smith, not Mr. and Mrs. Smith.

Below the names insert the complete address of the rental unit. Make sure you include the unit number or space number if applicable and the zip code. Add the county in which the rental unit is located. Although the county is not specifically required on the notice, it does help to list it if future action is required.

Preparing an eviction notice is the first step in what could lead to a legal action to evict. Since it is the first step, all of the following documents must be consistent with what is on the original notice and for this reason is why it is important to list the correct and full names and addresses on the original notice.

AMOUNT OWED (3-day notice to pay rent or vacate): You must state the exact dollar amount the tenant needs to pay in order to remain in the unit. This amount must be the amount owed on the date the notice is issued. Breakdown the amount owed, as shown on the notice. The breakdown helps you avoid arguments with your tenants about how you arrived at the total amount owed. It also allows the court to match the figures with your rental agreement and verify that they are correct and there are no hidden fees.

Future rent, future late charges or legal fees should not be added to the amount owed. Doing so could possibly invalidate your notice. Also, never add in prior rent and fees that you have already been awarded by a court. Future charges can be added if you prevail against the tenant in court.

Miscellaneous charges that can be added to your notice include: deposits that have not been paid, charges for damage to the unit, charges for utilities to be paid by the tenant, charges for the notice itself (but only if your rental agreement provides for this).

GROUND OF NOTICE (3-day termination notice): Remember, this is a drastic notice and gives the tenant only one choice; to move out of the rental unit. Be sure that you can substantiate the grounds for this notice. If you are uncertain whether to use this notice, ask an attorney or get advice from one of the landlord services that specializes in evictions before serving it.

As stated previously, the two most common grounds for serving this notice, are drug related activities and threat with a deadly weapon. In both of these cases, check both the nuisance and the unlawful use box, and then insert the illegal activity on the line after unlawful use. If charges have been filed and there is a police case number, insert the case number.

In most cases, the last box (see exhibit A) should be checked and another page marked exhibit A at the top attached. This page should state in detail the grounds for the notice. If you have a copy of a police report it should also be attached.

VIOLATION OR NON-COMPLIANCE (10-day notice to comply): First quote the clause or the rule of the rental agreement, which is being violated. This makes the tenant aware of what portion of their agreement they are violating and it gives the court something to review should you have to evict the tenant. Next, outline in detail exactly what the tenant is doing wrong. Keep it factual and avoid being vague. Include dates and times if at all possible. If you are too vague or petty, it will be hard to uphold your notice should it go to court. Have proof of the violation to back up your position, with one or two witnesses, preferably other tenants or neighbors.

The following is a sample notice to comply. In this instance there is not enough room to put everything in the space provided on the form. If this is the case, write “see attached EXHIBIT A”, a part of this notice by reference in the space provided on the form and title the second page EXHIBIT A.

SAMPLE EXHIBIT A

You are in violation of rule #3, under general rules, and clause #4 of your rental agreement, which states:

#3 NOISE / NUISANCE. Radio, television, stereo, tape player, musical instrument volumes and any other noises shall be kept at levels which cannot be heard outside of the rental unit. TENANT, his family and guests, shall not disturb the peace, comfort and enjoyment of other tenants and neighbors.

#4 USE / OCCUPANCY. No pets (unless pet addendum is added to this agreement) shall occupy the premises.

Your violation is as follows:

We have received complaints and observed the following:

2/14/95 at 9:30pm police and they	Yelling and screaming coming from rental unit. Neighbor called responded (see attached police report).
2/16/95 at 11:00pm	Electric guitar at full volume. Called and told you to turn it down.
2/18/95 at 10:30pm	Stereo at full volume. Called and told you to turn it down.
2/18/95 at 1:00am after just calling 2	Stereo at full volume. Called again and told you to turn it down ½ hours before. Threatened to call police.
2/19/95 at 6:00pm	Visited rental unit to talk about noise complaints. Observed cage with 3 or 4 white rats in it and large glass cage with a huge snake in it. Gave a verbal warning that we would serve notice if we had any more noise complaints. Also, told you to get rid of “pets”.
2/24/95 Evening	Yelling and loud arguing. Complaints received from several neighbors.

This behavior is disturbing the peace, comfort and enjoyment of the neighbors and interferes with their right to quiet enjoyment. The behavior must cease immediately. Pets of any type are prohibited and must be removed from premises.

JUST CAUSE (20-day termination notice – Seattle): If you have a rental within the city limits of Seattle, you must comply with the Seattle Housing Code. The “Just Cause Eviction Ordinance” of this code outlines nine specific instances under which a 20-day notice to terminate may be served. You must have at least one of these reasons to serve a valid 20-day notice in the City of Seattle. Fill in the blank on the 20-day notice with the reason or reasons for the notice, exactly as worded below:

1. You have failed to comply with a 3 Day Notice to Pay Rent or Vacate.
2. You have failed to meet and comply with a 10 Day Notice to Comply with the lease/ rental agreement or covenant(s) therein.
3. You have failed to meet and comply with a 10 Day Notice to comply with provision(s) of the Landlord/Tenant Act, RCW 59.18.
4. You have been issued a 3 Day Notice to Pay Rent or Vacate four times or more in a 12 month period.
5. You have been issued a 10 Day Notice to Comply three times or more in a 12 month period.
6. The conditions of your tenancy include employment on the property and that employment has been terminated.
7. The owner plans major construction or renovation that cannot be done while you are living in the unit and you are hereby offered first choice of the unit once the work is finished. It is estimated the work will be finished on or about _____.
8. The owner has decided to demolish or convert the unit to a condominium or non-housing use. The owner has obtained, in hand, all the necessary permits to demolish or change the buildings use, prior to the effective date of termination.
9. The owner, or an immediate member of the family, wish to reside in the unit.

DATE / SIGNATURE LINES / ADDRESS (All Notices): Insert the date that the notice is served. Remember, do not count this day when calculating the period the tenant has to comply with the notice.

Fill in the *landlord line* with the name of the rental company or the name under which you are conducting your rental business (If you are operating your rental business under your own name, and you are going to serve the notice yourself, then sign this line and leave the next line blank).

The *by agent line* should be signed by whoever serves the notices. If push comes to shove and you have to go to court you may need whoever signed and served the notice for you to testify in

court. Make sure they will be in the area and available if the notice should lead to a trial. The address at the bottom should be the address where the tenants normally pay their rent.

SERVING EVICTION NOTICES

Now that you have properly filled out the legal notice, the next step is to serve it in the prescribed way. The law outlines three standard ways of serving eviction notices:

1. **Personal Service:** A notice may be handed (served) to a tenant if you know there is only one tenant living in your rental unit. You can serve the notice to this person anywhere – you do not need to be physically at the rental unit. However, it is preferable to serve the tenant at the unit.

If you have more than one tenant (or think you do), including husband and wife, use the 2nd or 3rd method of service.

2. **Substitute Service:** Take the notice to the rental unit, knock on the door and serve the notice to a “person of suitable age and discretion”, then mail a copy of the notice to the tenant.

Suitable age and discretion are judgment calls on your part. Never leave a notice with a young child or an individual who is obviously not able to comprehend what is happening. If this is the case, proceed to serve notice by the 3rd method.

3. **Posting:** Tack a copy of the notice in a “visible place” on the rental unit (usually the front door) and mail a copy to the tenant.

POINTS TO REMEMBER WHEN SERVING NOTICES

- Send the notice via regular US mail. Make sure that the notice is mailed in the same county in which the rental is located. It is not required to be sent certified mail, and we do not recommend sending it this way. Put a copy in the postal pickup box the same day that you take the notice to the unit, even if you have missed the pick-up time for that day. The notice is considered “deposited” in the US mail when it is put in the box. Never just stick the notice in the tenant’s mailbox; it must be sent through the mail.
- Always try personal or substitute service before posting the notice on the door.
- The notice can be put into an envelope before tacking in onto the front door or other visible place.
- Be sure you have enough copies of the notice so you have one for the rental unit, one for the mail (if needed) and one for your files. The tenant does not have to receive the original notice but it is a good idea to give them the original. To add emphasis, the bold print at the bottom of the notice can be highlighted.

- The person who actually serves the notice will have to certify that they served the notice in the event of an eviction. If you have someone serve the notice for you, make sure it is someone who is going to be available if you need them, and or have them sign an affidavit of service.
- If you must proceed to an eviction, whoever mailed the notice will need to certify that it was mailed, by signing an affidavit of mailing.
- Make a note in the tenant's file regarding the date, time of day, and how the notice was served. You will need this information in the event the tenant fails to comply with the notice and you have to proceed to eviction.
- In calculating the period the tenant has to comply with the notice, allow 3, 10 or 20 days beyond the date of service (depending on the notice being served), plus one additional day if mailing is involved. Thus, if a 3-day notice to pay rent or vacate is posted on the tenant's door and mailed on Monday, the landlord must accept rent offered by the end of the day Friday. If you normally receive the rent in the mail, the postmark is the deadline, so you may want to allow enough time for mailed rent to be received.
- Proper service is essential in an unlawful detainer action. Failure to fully comply with the laws governing service of eviction notices is grounds for dismissal of the action. In such cases, the landlord must begin the procedure again, including the re-serving of the notice upon the tenants.
- At the end of the time frame, if the tenant has not paid, complied or moved, you can start the eviction procedure. You do not have to start the eviction process immediately after the time frame has expired, but do not wait too long or it may constitute a waiver.

OTHER LEGAL NOTICES

30-DAY NOTICE. In order to raise the rent or change the terms of the rental agreement, a 30-day notice is required. If the tenant is on a lease, the terms and the rent cannot be changed during the term of the lease unless the landlord and the tenant mutually agree to the change. There are two 30-day notices, one for raising the rent and changing the terms and conditions of the rental agreement, and one for changing only the terms and conditions.

There is no required procedure for serving the 30-day notice. It can be mailed or hand delivered to the tenant. However, in order to be valid, it must be served not less than 30 days prior to the end of a rental period. When mailing, the postmark counts as the date of delivery. It is a good practice to give the tenant more than the required 30 days. If your rental period starts on the first of the month, try to serve the notice a week or two prior to 30 days before the first. It is also good practice to send out a reminder to the tenant one week before the change takes effect.

ABANDONMENT NOTICE. This notice is used if the tenant skips out and leaves furniture and or other possessions of some obvious value in the rental unit. Under the Landlord/Tenant Act, the tenant may be considered to have abandoned the property “if the tenant defaults in the payment of rent and reasonably indicates by words or actions the intention not to resume tenancy”. In cases of abandonment, the tenant usually vacates the premises without notifying the landlord. However, be extremely cautious before entering the unit and moving any of the “past tenant’s” possessions. Even though delinquent on rent, the tenant may just be off communing with nature for a few days. If you enter a rental unit and move the tenant’s possessions before he has actually vacated and have not gone through the eviction process, you will be opening yourself up to fines and a lawsuit.

In the case of abandonment, it is definitely best to err on the side of caution. If you suspect the tenant has left the rental unit for good, we suggest you proceed as follows:

1. Post a 48-hour maintenance inspection notice on the tenant’s door along with 3-day pay rent or vacate notice. Tape the notices to the door in such a way that the tape must be broken when the door is opened. Mail a copy of the 3-day notice to the tenant’s last known address (if you have an emergency situation or good grounds for entering the unit on an emergency, go ahead and enter).
2. Check with other tenants and neighbors. It is usually surprising how much they know. However, take what they tell you with a “grain of salt”.
3. Call the tenant’s phone number and check with the phone company to find out if the phone bill is past due or if a disconnect order has been given.
4. Check with the utility company to find out if the utility bill is past due.
5. Call the tenant’s work number and verify employment.
6. Ask a neighbor to keep an eye on the unit for you and let you know if there is any activity.
7. Look at the tenant’s rental application for family or friends whom you might call.
8. Short of hiring a private eye, do anything else you can think of to track down the tenant.

Once you have done everything to establish your right, as an owner, to look at your property, enter the property. It’s a good idea to have a witness with you and a camera. Knock, pound, holler then use your key. After opening the door you will find:

- a. The unit hasn’t been vacated. All the tenant’s possessions are still in the unit, including personal effects, and there is no indication that the tenant is in the process of moving. Shut the door and proceed with an eviction. Notify the police if you suspect the tenant may be missing.
- b. The tenant is still in the unit and incapacitated or worse yet, dead. This is a rare situation. If the tenant is still inside and isn’t answering the door you should have had some prior indication the unit is occupied.
- c. The tenant has vacated and cleaned the unit (yeah right).
- d. The unit is vacant but a mess – lots of trash, paper and things to clean up. There are no personal possessions or anything of value left in the unit (most likely).
- e. The tenant has vacated the unit and left property of value in the unit.

In the case of abandonment, you have the right to enter the unit and take possession of any of the tenant's property found on the premises. The property must be stored in a "reasonably secure place" and the landlord must make a "reasonable effort" to provide the tenant with the abandonment notice.

The abandonment notice must be sent via regular first class mail, to the tenants at their last known address (your rental), and any other address the tenant has provided to you in writing or where you believe the tenant might receive the notice. Fill out the heading and the bottom of the abandonment notice as previously outlined. The date of the notice should be the same day that you mail the notice. The storage address is the location where the property is stored.

If the total value of the property is under \$50, it may be disposed of or sold after seven days from the date that the abandonment notice is mailed, except for "personal papers, family pictures and keepsakes". If the value of the property is over \$50, it may be disposed of or sold after 45 days from the date that the abandonment notice is mailed, including "personal papers, family pictures and keepsakes". Check the appropriate box on the form.

After the prescribed time period, the landlord "may sell or dispose of the property". It is up to the landlord as to how this is done. The property doesn't have to be auctioned or even advertised for sale. Any money received from the sale can be applied towards unpaid rent and storage charges. Any amount over must be retained for one year after the date of sale. After that it becomes the property of the landlord.

Don't get too excited if the tenant left a new TV, furniture and other items of substantial value. Tenants rarely leave anything of value behind which belongs to them. Expect a call from a rental company, a collection company, mom, dad or friend claiming ownership. Do not release anything unless the individual has some proof of ownership and signs an agreement that will protect you from other claims to the property.

ONE AND TWO DAY NOTICE TO ENTER. These notices are primarily for a tenant who is denying you entry or you think may try to deny you entry to your rental unit. In most instances you will probably want to use the informal Permission to Enter notice. Pick the form that meets your situation and management style.

You can put more "teeth" in this notice by checking the lower box and attaching a copy of RCW 59.18.150; which provides: 1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling and 2) A tenant who continues to violate this section...shall be liable for up to \$100 for each violation after receipt of the notice. If the tenant continues to deny you access after serving the notice to enter, then serve the Denial of Entry Notice. With the service of this notice, the tenant becomes liable for up to \$100 for each violation. In addition, to the notice of violation, you can also serve the tenant a 10-day notice to comply with rental agreement.

