

DRAFTING AND SERVING NOTICES

Almost all legal actions involving landlord-tenant matters begin with a written notice from one party to the other. In most instances, Florida law *requires* the service of a properly written notice upon a tenant before a landlord can take any legal action. Because of such requirement, a mistake in the drafting *or* serving of a legally-required notice can result in a landlord having a case dismissed in court and the possibility of having to pay a tenant's attorney's fees. Therefore, it is important to make sure that all notices are filled out accurately and that they are served upon tenants in the manner required by Florida law.

When drafting a notice, the names of *all* occupants of an apartment who are responsible under the lease (i.e., all who have signed the lease) should be listed on the notice. All notices in this booklet (except as specifically discussed below) may be hand-delivered to the tenant (including tenants at least 14 years old or older), left at the tenant's apartment *if* the tenant is not at home, or sent to the tenant by mail (first class or certified). If the notice is to be sent by mail, a copy of the notice should be sent *separately* to *each* tenant who signed the lease. If the landlord mails the notice to the tenant, Florida law requires that the tenant be given *5 extra days* to respond to the notice. For example, if the notice is a common 3-Day Notice for overdue rent, the tenant must be given *8 days* to pay instead of 3 days. Also, a copy of the notice should be individually sent to each occupant of the apartment who has signed the lease. Because of the 5-day rule, landlords generally chose to hand-deliver notices to tenants.

After drafting a notice but prior to serving it, the landlord should make a copy of the notice for his or her file. If the landlord anticipates problems with a tenant, he/she should take someone along when serving the notice. Not only may this prevent a confrontation, but the additional person can also act as a witness to the delivery of the notice. As stated above, a notice should be served by posting or leaving a copy at the tenant's apartment *only* if the tenant is not at home.

Once the notice is delivered, the landlord must complete the "certificate of service" portion on the bottom of the *landlord's copy* of the notice, and include a notation regarding any witnesses. The fully completed notice should then be placed in the tenant's file for future action.

The foregoing information is not intended to be, and it should not be considered a substitute for professional legal advice or services when the need arises. Each situation has its own peculiarities and laws frequently change. Therefore, you should always seek the advice of legal counsel when a legal matter arises. Drake & Associates – 813-662-1536; www.danielgdrake.com

Regarding 3-Day Notices for unpaid rent, it is important that the landlord properly calculate the 3-day time period. Florida law states that Saturdays, Sundays, and legal holidays must be excluded from the 3-days, as well as the day the 3-Day Notice is served. Therefore, if you serve a 3-Day Notice on a Monday, the next day (Tuesday) is the first day, Wednesday is the second day, and Thursday is the third and final day. If you serve a 3-Day Notice on a Wednesday, then the next day (Thursday) is the first day, Friday is the second day, *exclude Saturday and Sunday*, and the following Monday is the third and final day. If you serve a 3-Day Notice on a Friday, you do not begin counting days until the following Monday, which is the first day. The next day, Tuesday, is the second day, and Wednesday is the third and final day. Last, if you serve a 3-Day Notice on a Saturday or a Sunday, you *do not* begin counting the three days until the following Monday, which will be the first day. Tuesday will then be the second day, and Wednesday will be the third and final day. If any one of the three days is a legal holiday, *do not count that day*. If the third day is a legal holiday, then the tenant's three days does not expire until midnight of the next day that is *not* a holiday and is *also not* a Saturday or a Sunday. Also, 3-Day Notices *do not* expire until midnight of the last day regardless of the time that your office closes.

Regarding 7-Day Notices, the landlord must *not* count the day of service. However, unlike 3-Day Notices, weekends and holidays *are not* excluded from the 7-day period unless the *last day* of the 7-day period is a weekend or holiday. In such event, the tenant is given an extra day.

Regarding a tenant's security deposit, the time period in which a landlord must respond in writing depends on whether the landlord intends to impose a claim upon the deposit. If the landlord *does not* intend to impose a claim, the landlord has 15 days to return the security deposit (with interest if the security deposit was held by the landlord in an interest-bearing account) to the tenant. A full return of a tenant's security deposit should be sent to the tenant's last know address by certified mail.

If the landlord *does* intend to impose a claim, the landlord has 30 days to notify the tenant of the landlord's intention to impose a claim on the tenant's security deposit *and* the reason for imposing the claim. Such a notice *must* be sent to the tenant by certified mail to the tenant's last known mailing address. Unless the tenant objects to the landlord's claim (all or in part) within 15 days after receipt of the landlord's notice, the landlord may then deduct the amount of the claim from

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the tenant's security deposit. The landlord must send the tenant the unused portion of the security deposit within 30 days after the date that the landlord sends the first notice imposing a claim upon the security deposit.

If the landlord fails to give the required notice within the 30-day period, the landlord forfeits the right to impose a claim upon the security deposit. This *does not* mean that the landlord loses his or her claim against the tenant for damages or unpaid rent; it only means that the landlord must refund the tenant's security deposit and pursue the tenant for damages through a civil action. Also, if a tenant vacates or abandons his or her apartment prior to the expiration of the lease, the tenant must give the landlord written notice indicating that the tenant is vacating or abandoning the apartment and must provide the tenant's new address. This notice must be provided to the landlord at least 7 days prior to the tenant vacating or abandoning the apartment, and must be delivered by certified mail or personal delivery to the landlord. A tenant's failure to give such notice shall relieve the landlord of the 15-day and 30-day notice requirements set forth above, but does not waive any right the tenant may have to the security deposit or any part thereof.

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