

## **EVICTION NOTICES**

**© Scott L. Smith (2004)**

There are several bases for eviction in Nevada. All required giving tenant a notice. Some notices give the tenant and option to cure the default or situation (e.g. non-payment of rent, breach of rental agreement). Other notices merely give tenant warning to vacate the property. If the tenant does not comply with the notice, they will be in unlawful detainer, and eviction proceedings may begin pursuant to NRS Chapter 40.

Thus the first step in any eviction proceeding is the notice. The notice must be of the proper type, be properly served, and the time frame of each notice must be observed before further action can be taken. This section of the materials will no look at notices and when they are appropriate.

Part One of this section will discuss Summary Evictions. Part Two will look at the requirements for service of notices to quit. Part Three will then review the types of notices available under Nevada Law.

### PART ONE – SUMMARY EVICTION

Nevada has two parallel and non-mutually exclusive<sup>1</sup> means for evictions, summary evictions and civil lawsuits. This schizophrenia provides for a lot of confusion to the neophyte. Thus any discussion or evictions and the notices required to initiate them should carefully outline the differences in requirements for each procedure. Civil Lawsuits are explained in depth in Part III of this course. An explanation of the Summary Eviction procedure will therefore be helpful here.

Summary Evictions allow for exclusion of the tenant from the leased premises in a relatively short amount of time. Because of the summary nature of the proceedings, extra safe

---

<sup>1</sup> NRS § 40.253 (1) (2003).

guards have been put into Nevada Statutes to ensure landlords give tenants actual notice of the proceedings.

Summary Evictions, in short, involve a landlord serving a special kind of notice to quit in a special way, giving the tenant 5 judicial days to file a response, and then either (1) evicting based on a lack of response or (2) holding a hearing for the determination of whether or not rent was paid and then evicting if it has not been paid.<sup>2</sup>

Summary eviction is available only for non-payment of rent. Despite the fact that both Henderson and Las Vegas Township Justice Court's provide forms for summary eviction for bases other than non payment of rent, NRS § 40.253 states that the supplemental remedy is available "when the tenant . . . with periodic rent reserved by the month or any shorter period is in default in payment of the rent."<sup>3</sup> Summary eviction should only be used for non-payment of rent.

Summary eviction is started by the landlord serving a 5-day notice to pay or quit pursuant to NRS §§ 40.2512, 40.253 and 40.280 (3). The difference in this type of notice and the manner of service versus a regular non payment of rent notice is discussed below.

Once the notice is served, the tenant has 5 judicial days to respond. "Judicial days" are days the court is open. Therefore, weekends and holidays don't count. In Henderson Township, were the Justice Court closes on Friday, Fridays don't count either. Thus a 5-day notice gives the tenant 8 days to respond (9 days if they live in Henderson).

Tenants respond in one of two ways. The tenant can pay the rent demanded, or can file an affidavit with the Justice Court. The affidavit can say anything,<sup>4</sup> as long as it is filed, the

---

<sup>2</sup> NRS § 40.253 (2003).

<sup>3</sup> NRS § 40.253 (1) (2003).

<sup>4</sup> § 40.253 (6) states, "regardless of the information contained in the affidavit."

court “shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section.”<sup>5</sup>

Once the landlord is given notice of the hearing, it is incumbent upon the landlord to file the Plaintiff’s paperwork (affidavit of complaint for summary eviction, proposed order for summary eviction and constable instructions). If those documents are not filed with the Justice Court, the hearing will be dismissed and the landlord must start over on the notice process.

At the hearing, the court is not to take evidence. It may only look at whether rent was paid, and any defenses the tenant may raise to non-payment of rent. If the court finds no defenses then it will order the tenant summarily evicted. If the court does find defenses, it is to “refuse to grant either party any relief, and . . . shall require that any further proceedings be conducted pursuant to” civil evictions.<sup>6</sup>

It is the author’s opinion that summary evictions are unconstitutional. They require a defendant to answer and submit to the jurisdiction of the court before the complaint is filed or served. This is a clear violation of the due process clauses of the Federal and Nevada Constitutions. The author offers it as his further opinion that the summary eviction process has only survived as long as it has because no tenant has had the resources necessary to challenge it in court. Now that Nevada has a law school and it’s accompanying pool of free legal labor, the author believes that it is only a matter of time before legal aid groups challenge the summary eviction process.

#### PART TWO - SERVICE OF NOTICE

Service of a notice to quit is governed by NRS § 40.280. That statute gives three options to serve a notice to quit.

---

<sup>5</sup> Id.

<sup>6</sup> Id.

- (a) By delivering a copy to the tenant personally, in the presence of a witness;
- (b) By leaving a copy with a person of suitable age and discretion at place of residence or usual place of business and mailing a copy to the tenant at his place of residence or place of business; or
- (c) By posting a copy in a conspicuous place on the leased property, delivering a copy to a person there residing, if the person can be found, and mailing a copy to the tenant at the place where the leased property is situated.

NRS § 40.280 (1)(a)-(c). By far, option (c) is the most widely used.

Serving a notice to quit requires two steps by any of the three options. Option (a) requires (1) finding the tenant personally and (2) bring a witness who will sign under penalties of perjury that the notice was delivered. Options (b) and (c) require (1) delivering the notice (to either a person of suitable age and discretion or to the door of the leased premises) and (2) mailing a copy of the notice to the leased premises.

When serving a summary eviction notice, additional requirements are placed upon the landlord. Subsection 3 requires the landlord to file proof of service for summary eviction notices with the court. The proof of service is shown by either:

- (a) A statement, signed by the tenant and a witness, acknowledging that the tenant received the notice on a specified date;
- (b) A certificate of mailing issued by the United States Postal Service; or
- (c) The endorsement of a sheriff, constable or other process server stating the time and manner of service.

It is a rare tenant that will willing sign an acknowledgement of receipt before a witness on a notice to quit. Thus, option (b) is the most popular.

There is a difference between a certificate of mailing and certified mail. The statute requires a certificate of mailing issued by the US Postal Service. That is a form obtained from the post office (individual certificate is PS Form 3817, logs are available from the post office for landlords who serve more than 3 per month).

<b>U.S. POSTAL SERVICE</b> <b>CERTIFICATE OF MAILING</b>
<small>MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER</small>
Received From: <hr/> <hr/>
One piece of ordinary mail addressed to: <hr/> <hr/> <hr/>

Affix fee here in stamps or meter postage and post mark. Inquire of Postmaster for current fee.

PS Form **3817**, January 2001

It is important to note that in summary eviction proceedings, the court will count the date of mailing as the beginning of the notice period, so mail the notice on the same day it is served.

Another final note, the Las Vegas Justice Court, by fiat, has determined that in summary eviction notices, all of the service options outlined by NRS 40.280 (1) required a witness. That is, the clerk’s office claims it has been instructed not to accept any summary evictions were the notice is not signed by a witness, even if options (b) or (c) are used for service. So if you client wants to evict someone in Las Vegas Township by summary eviction, they must have a witness sign that she/he saw the server post the notice on the door and mail it by certificate of mailing, regardless of what the statutes say.

### PART THREE – TYPES OF NOTICES TO QUIT

There are several types of notices to quit. Each is created by a separate portion of Nevada Landlord/Tenant law as codified in NRS Chapters 40 and 118A. Different bases for unlawful detainer require different notices. In the appendix to this section, the author provides copies of notices his client’s use for each type of notice.

### **A. Termination for Non-Payment of Rent**

This is by far the most common basis for unlawful detainer and therefore the most common type of notice. As there are two forms of evictions, there are two types of notice, one for summary eviction, and one for civil lawsuits.

The authority for this notice comes from NRS § 40.2512.<sup>7</sup> That statute makes the tenant guilty of unlawful detainer after a 5 day notice to pay the rent or vacate the premises is served upon him. The tenant gets a 10 day notice for a mobile home. This notice may be served any time after rent becomes due. There is no requirement to wait until late fees start.

The landlord needs to be careful regarding partial payments. The 5-day pay or quit notice requires the landlord to state how much is owed. If the landlord accepts any money after the notice is served, even a partial payment, the tenant will no longer owe the amount on the notice and therefore has a complete defense against it (see Section IV, *infra*). Accepting a partial payment will require the landlord to file a new notice and give the tenant another 5 judicial days to answer.

Accordingly, the landlord may refuse to accept anything less the amount stated on the notice. In civil lawsuits, if the lease provides for it, the landlord can claim collections costs, attorneys fees or other costs in the notice amount. In Summary eviction proceedings however, the landlord cannot refuse to accept a payment of the rent and late fees. (You may not add on anything other than rent, a reasonable charge for late payments of rent or dishonored checks).<sup>8</sup>

---

<sup>7</sup> NRS § 40.2512 Unlawful detainer: Possession after default in payment of rent. A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing, requiring in the alternative the payment of the rent or the surrender of the detained premises, remains uncomplied with for a period of 5 days, or in the case of a mobile home lot, 10 days after service thereof. The notice may be served at any time after the rent becomes due.

<sup>8</sup> A landlord shall not refuse to accept rent from a tenant that is submitted after the landlord or his agent has served or had served a notice pursuant to subsection 1 if the refusal is based on the fact that the tenant has not paid

The notice must state that the tenant owes some amount, that they have 5 days to pay it or vacate, and where to pay it. See Exhibit II-1. In summary eviction notices, additional information is required. Summary eviction notices must also (1) advise the tenant of the court that has jurisdiction over the matter; and (2) advise the tenant of his right to contest the notice by filing within 5 days an affidavit with the court that has jurisdiction over the matter that he is not guilty of an unlawful detainer.<sup>9</sup> It should be noted that the Las Vegas Justice Court, by fiat, has decided that a summary eviction notice in Las Vegas Township must state the words “Las Vegas Township” when advising the tenant of the court that has jurisdiction over the matter. Exhibits II-2 & 3 are summary eviction notices for Las Vegas and Henderson Townships.

## **B. Termination for Breach of Rental Agreement**

There are two types of notice for breach of rental agreements. There is a 5-day notice for general breaches of lease, and a 3 day notice for specific types of breaches. In general, the 5-day notice is used for breaches that can be remedied, and 3-day notices are for breaches that cannot be remedied.

### **1. 5-Day Unlawful Detainer Notice**

For a breach that does not qualify for a 3-day notice, a 5-day unlawful detainer notice is required. This notice comes from NRS § 40.2516.<sup>10</sup> This notice is given for “neglect or failure

---

collection fees, attorney’s fees or other costs other than rent, a reasonable charge for late payments of rent or dishonored checks, or a security. NRS § 40.253 (9) (2003).

<sup>9</sup> NRS § 40.254(1) (2003).

<sup>10</sup> NRS 40.2516 Unlawful detainer: Possession after failure to perform conditions of lease; saving lease from forfeiture. A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property or mobile home is held, other than those mentioned in NRS 40.250 to 40.252, inclusive, and NRS 40.254, and after notice in writing, requiring in the alternative the performance of the condition or covenant or the surrender of the property, served upon him, and, if there is a subtenant in actual occupation of the premises, also upon the subtenant, remains uncomplished with for 5 days after the service thereof. Within 3 days after the service, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person, interested in its continuance, may perform the condition or covenant and thereby save the lease from forfeiture; but if the covenants and conditions of the lease, violated by the lessee, cannot afterwards be performed, then no notice need be given.

to perform any condition or covenant of the lease” other than those outlined for the other notices in Chapter 40. The tenant must be given the option to comply within 5 days or vacate. If they do not comply or vacate, they are guilty of unlawful detainer. An example of that notice can be found in Exhibit II-4.

There are apocryphal practices of using a 3 day nuisance notice followed by a 5 day unlawful detainer notice to evict a tenant for violations of the lease. This practice is not statutory! Nowhere is there a requirement to follow one notice with another in order to apply for an eviction. The 5 day notice is a catch-all for violations of the lease the other notices do not cover.

## 2. 3 Day Nuisance Notice

The 3-day nuisance notice comes from NRS 40.2514<sup>11</sup> This statute makes a tenant guilty of unlawful detainer when they:

1. Assigns or sublets the leased premises contrary to the covenants of the lease;
2. Commits or permits waste thereon;
3. Sets up or carries on therein or thereon any unlawful business;
4. Suffers, permits or maintains on or about the premises any nuisance; or
5. Violates any of the provisions of NRS 453.011 to 453.552, inclusive, except NRS 453.336, therein or thereon,

(NRS 453 deals with drug crimes.) After a tenant commits one of the outlined breaches, the landlord may give them a 3-day notice to vacate. There is no requirement to give the tenant an opportunity to comply or cure. A copy of a 3-day notice is found in Exhibit II-5.

---

<sup>11</sup> NRS 40.2514 Unlawful detainer: Assignment or subletting contrary to lease; waste; unlawful business; nuisance; violations of controlled substances laws. A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he:

1. Assigns or sublets the leased premises contrary to the covenants of the lease;
2. Commits or permits waste thereon;
3. Sets up or carries on therein or thereon any unlawful business;
4. Suffers, permits or maintains on or about the premises any nuisance; or
5. Violates any of the provisions of NRS 453.011 to 453.552, inclusive, except NRS 453.336, therein or thereon, and remains in possession after service upon him of 3 days’ notice to quit.

### C. Termination for No Cause Where There is No Rental Agreement

Next the tenant can be given a notice to leave when there is no rental agreement or the agreement is a month-to-month or week-to-week tenancy.<sup>12</sup> This is sometimes called the “no-

---

<sup>12</sup> NRS 40.250 Unlawful detainer: Possession after expiration of term. A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he continues in possession, in person or by subtenant, of the property or mobile home or any part thereof, after the expiration of the term for which it is let to him. In all cases where real property is leased for a specified term or period, or by express or implied contract, whether written or parol, the tenancy terminates without notice at the expiration of the specified term or period.

NRS 40.251 Unlawful detainer: Possession of property leased for indefinite time after notice to quit; older or disabled person entitled to extension of period of possession upon request.

1. A tenant of real property, a recreational vehicle or a mobile home for a term less than life is guilty of an unlawful detainer when having leased:

(a) Real property, except as otherwise provided in this section, or a mobile home for an indefinite time, with monthly or other periodic rent reserved, he continues in possession thereof, in person or by subtenant, without the landlord's consent after the expiration of a notice of:

- (1) For tenancies from week to week, at least 7 days;
- (2) Except as otherwise provided in subsection 2, for all other periodic tenancies, at least 30 days; or
- (3) For tenancies at will, at least 5 days.

(b) A dwelling unit subject to the provisions of chapter 118A of NRS, he continues in possession, in person or by subtenant, without the landlord's consent after expiration of:

(1) The term of the rental agreement or its termination and, except as otherwise provided in subparagraph (2), the expiration of a notice of:

- (I) At least 7 days for tenancies from week to week; and
- (II) Except as otherwise provided in subsection 2, at least 30 days for all other periodic tenancies; or

(2) A notice of at least 5 days where the tenant has failed to perform his basic or contractual obligations under chapter 118A of NRS.

(c) A mobile home lot subject to the provisions of chapter 118B of NRS, or a lot for a recreational vehicle in an area of a mobile home park other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215, he continues in possession, in person or by subtenant, without the landlord's consent:

(1) After notice has been given pursuant to NRS 118B.115, 118B.170 or 118B.190 and the period of the notice has expired; or

(2) If the person is not a natural person and has received three notices for nonpayment of rent within a 12-month period, immediately upon failure to pay timely rent.

(d) A recreational vehicle lot, he continues in possession, in person or by subtenant, without the landlord's consent, after the expiration of a notice of at least 5 days.

2. Except as otherwise provided in this section, if a tenant with a periodic tenancy pursuant to paragraph (a) or (b) of subsection 1, other than a tenancy from week to week, is 60 years of age or older or has a physical or mental disability, the tenant may request to be allowed to continue in possession for an additional 30 days beyond the time specified in subsection 1 by submitting a written request for an extended period and providing proof of his age or disability. A landlord may not be required to allow a tenant to continue in possession if a shorter notice is provided pursuant to subparagraph (2) of paragraph (b) of subsection 1.

3. Any notice provided pursuant to paragraph (a) or (b) of subsection 1 must include a statement advising the tenant of the provisions of subsection 2.

4. If a landlord rejects a request to allow a tenant to continue in possession for an additional 30 days pursuant to subsection 2, the tenant may petition the court for an order to continue in possession for the additional 30 days. If the tenant submits proof to the court that he is entitled to request such an extension, the court may grant the petition and enter an order allowing the tenant to continue in possession for the additional 30 days. If the court denies the petition, the tenant must be allowed to continue in possession for 5 calendar days following the date of entry of the order denying the petition.

cause” notice. When a landlord wishes to terminate the tenancy, it must give the tenant notice of that termination one rent period in advance. An example of this notice is attached as Exhibit II-6.

This notice becomes effective on the next date rent is due. Therefore, if rent is due on the first of each month, a notice served on 15 December 2004 will be effective beginning on 1 January 2005, requiring the tenant to vacate on or before 31 January 2005.

#### **D. Termination of Rental Agreement When Property is Sold**

The next notice is used when the real property is sold or foreclosed upon. Once the property is sold, the hold-over resident can be evicted with this notice.<sup>13</sup>

#### **E. Termination by Landlord Under the Terms of Written Rental Agreement**

Were a landlord manages more than four rental properties, failure of a tenant to comply with the lease is a basis for termination of the tenancy.<sup>14</sup> Here, the landlord gives the tenant a 5

---

<sup>13</sup> NRS 40.255 Removal of person holding over after 3-day notice to quit; circumstances authorizing removal.

1. Except as provided in subsection 2, in any of the following cases, a person who holds over and continues in possession of real property or a mobile home after a 3-day written notice to quit has been served upon him, and also upon any subtenant in actual occupation of the premises, pursuant to NRS 40.280, may be removed as prescribed in NRS 40.290 to 40.420, inclusive:

(a) Where the property or mobile home has been sold under an execution against him or a person under whom he claims, and the title under the sale has been perfected;

(b) Where the property or mobile home has been sold upon the foreclosure of a mortgage, or under an express power of sale contained therein, executed by him or a person under whom he claims, and the title under the sale has been perfected;

(c) Where the property or mobile home has been sold under a power of sale granted by NRS 107.080 to the trustee of a deed of trust executed by such person or a person under whom he claims, and the title under such sale has been perfected; or

(d) Where the property or mobile home has been sold by him or a person under whom he claims, and the title under the sale has been perfected.

2. This section does not apply to the tenant of a mobile home lot in a mobile home park.

<sup>14</sup> NRS 118A.430 Failure of tenant to comply with rental agreement or perform basic obligations: Termination of rental agreement.

1. Except as otherwise provided in this chapter, if the tenant fails to comply with the rental agreement or fails to perform his basic obligations under this chapter, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate as provided in this section. If the breach is remediable and the tenant does not adequately remedy the breach or use his best efforts to remedy the breach within 5 days after receipt of the notice, or if the breach cannot be remedied, the landlord may terminate the rental agreement.

day notice, and allow the tenant those 5 days to remedy the breach, (if the breach is remediable).

If the breach is not remedied in 5 days, the landlord can then terminate the agreement.

---

2. If the tenant is not reasonably able to remedy the breach, the tenant may avoid termination of the rental agreement by authorizing the landlord to enter and remedy the breach and by paying any reasonable expenses or damages resulting from the breach or the remedy thereof.