



## WHEN AND HOW TO EVICT A TENANT IN TEXAS

If you invest in rental properties, your income depends on your tenants' making their full payments on time . . . and on the Texas Property Code.

### *If your tenants do not pay on time, what are your options?*

It is important for you to know the legal protocol to deal with evictions as well as options other than evictions. Here is the essential information you will need before deciding to evict and the steps to take to evict if you decide it is necessary.



#### **WHAT IS AN EVICTION?**

An eviction is a lawsuit filed by the owner of property being occupied by others, usually tenants, to remove all persons and their personal assigns from the property.



#### **HOW CAN I DETERMINE WHETHER TO FILE A LAWSUIT?**

If your tenant has not paid the rent on time, in Texas the landlord may give the tenant the option to pay the rent late or give the tenant a Notice to Vacate. If you allow the late rent payment, you must notify him/her in writing that the rent is due. Otherwise the tenant must move out.



#### **IF THE PROPERTY HAS BEEN ABANDONED, CAN'T I JUST ENTER AND CHANGE THE LOCKS?**

Not necessarily. If it appears that some possessions have been left on the property, the tenant may not have abandoned and vacated the premises. According to Texas law, a property is considered abandoned if it is "empty, that is, without contents of substantial value . . . the term 'substantial value' does not mean merely substantial monetary value, but the term includes value attributable to the utility of the furniture. It is well known that furniture, because of age and condition, may have little monetary value, but to the owner or user has substantial utility, and retention in the house would evidence the absence of complete abandonment. From the evidence recited we are of the view that the reasonable mind could conclude there was furniture of substantial value in the house and therefore it was not vacant." *Knoff v. U.S. Fidelity*, 447 S.W.2d 497 (Tex. Civ. App.—Houston, 1969, no writ). In this event, an eviction proceeding would still be required. Otherwise the landlord could be sued for conversion.



#### **HOW TO MOVE FORWARD WITH EVICTION**

In Texas, if a tenant has not paid the rent, the landlord can begin the eviction process the day after the rent was due.

Unless the lease or rental agreement specifies otherwise, rent is considered late just one day after it is due. Although you must allow a one day grace period before charging a late fee, you are permitted by Texas law to give a Notice to Vacate to a tenant who is only one day late on paying rent.

After receiving this eviction notice, the tenant is allowed three days by Texas law to pay the rent if the lease or rental agreement includes this provision. Of course the agreement may specify a shorter or longer period of time for the rent to be paid.



#### **THE NOTICE TO VACATE MUST INCLUDE THE FOLLOWING INFORMATION AND IS REQUIRED TO BE IN WRITING:**

1. Name(s) and address of tenant(s)
2. Date the notice was served on the tenant(s)
3. The reason for the notice, i.e., failure to pay rent and the period of such failure
4. A statement that the landlord may pursue legal action (an eviction lawsuit) if the tenant does not move
5. A statement that the tenant has three days to move out, including the date and time when the tenant must be out
6. A statement of how the notice was given to the tenant, i.e., by actually giving the notice to the tenant or mailing the notice

If there is an option for late rental payment in the lease or agreement, the Notice must state the number of days the tenant has in order to pay or vacate the property.



#### **DON'T MISS THIS PART . . .**

If the Notice to Vacate excludes any of the necessary information, then it is not valid. If this were to happen, you would need to provide another notice to the tenant, which starts the 3-day period again.



#### **PROCESS FOR DELIVERING NOTICES TO VACATE IN TEXAS**

1. The landlord or his/her agent may hand the Notice to the tenant or anyone living in the property who is at least 16 years of age.
2. You may post the notice on the inside of the front door if you can access it legally.
3. You can mail the Notice to Vacate by US Mail or Registered or Certified Mail; however, you must request a Return Receipt.
4. If there is no mailbox on the rental property and if the landlord has no means by which to legally enter the property, then you may post the notice on the outside door of the property — or somewhere visible on the front of the property if there is anything preventing you from gaining access to the inside of the property. This should be the last resort.



#### **AND, YOU GUESSED IT . . .**

Texas law requires that the landlord serve the notice properly or a new notice must be created. This starts the process anew.



#### **WHAT IF THE TENANT PAYS OR MOVES OUT?**

If the tenant pays or moves out within the specified time period, you do not have to proceed to evict and may not evict if they paid as required by the Notice.



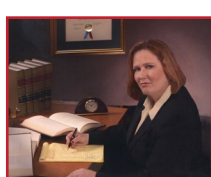
#### **THE FINAL STEP**

If the tenant does not pay the rent or move out and if you have carefully followed all the processes and desire to evict the tenant, you must proceed to court. File an eviction proceeding (Forcible Entry and Detain) with the Justice of the Peace Court in the district where the property is located. If you are successful in court, the court will issue a writ of possession and a constable will supervise the removal of the tenant.



#### **THE BOTTOM LINE: IT IS YOUR DECISION**

Your rental property provides an income. You have the right to be paid on time. But you may also want to balance the importance of being paid on time every time with the importance of having a good tenant who takes care of your property. In the end, you must decide!



#### **Written by**

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