



## NOTICE TO VACATE – COMMON PITFALLS

- ① Be careful how you title this document. It is best to title the document “Notice to Vacate.”
- ② It **MUST** be addressed to everyone who **SIGNED** the lease or is listed as a resident.
  - a. It should also include the phrase “and all other occupants.”
  - b. It does not have to list the names of the other occupants who did not sign the lease.
- ③ Remember to include the apartment number and complete address.
- ④ Be sure to provide details about the charges that are currently due and owing. For example, do not just put the total amount of money or lump sum due. Instead, itemize the balance by listing the months for which rent is due, the amount of rent due for each month, and then you may want to put the total amount due.

\* Note: You can also list the amount of late fees that are due but in an eviction suit, you are only entitled to obtain a judgment for past due rents. While some leases provide that late fees and some utilities are also considered rent, many judges still only allow you to get a judgment for pure rent. There is nothing wrong about including the late fees on the Notice to Vacate, just know that you will not likely get a judgment for those fees. The same is true for utility charges.
- ⑤ It should not just tell the tenant that they are in default of the Lease because this does not satisfy the “demand for possession” requirement in [Section 24.002\(b\) of the Texas Property Code](#).
- ⑥ It should not tell the tenant to move out immediately.
  - a. The lease will usually dictate the time frame in which the tenant will be allowed to move out after receiving the notice to vacate.
  - b. Some leases have 24 hour move out requirements if the tenant is being evicted for lease violations that involve violence or other bad acts.
  - c. If the lease is silent, be sure to give at least three (3) days notice to vacate.

- However, if you want to collect attorney fees in the JP court and the lease agreement does not address this issue, you may need to send the tenant a ten (10) day notice to vacate. [See Section 24.006 of the Texas Property Code.](#)
- d. Be very careful if the tenant is on some type of government housing assistance.
  - The type of housing will dictate whether a notice of lease termination needs to be sent to the tenant prior to the notice to vacate.
  - If a notice of lease termination has to be sent to the tenant prior to the notice to vacate, the notice to vacate cannot be sent to the tenant prior to the expiration of the days allowed for the tenant to respond to the notice of lease termination.
  - And, be aware that the housing authority may also need notice of the eviction.
- e. Regardless of the number of days stated in the notice to vacate, be sure to put the actual date on the notice to vacate by which the tenant is expected to move out.

**7** The Notice to Vacate **MUST** be unconditional; otherwise, you may lose the eviction.

- a. It should state: “This notice to vacate is unconditional.”
- b. It should not contain language that says to pay the rent or vacate. For example:

“You must vacate for non-payment of rent within three days if payment is not received.”

“We declare your nonpayment of the foregoing amounts to be a default of the apartment lease contract and demand that you pay all sums due or deliver possession of the above referenced apartment to us within 3 days from the date this notice is received by you, or legal proceedings may be instituted to recover possession of the leased premises.”

- These types of notices are considered “pay or quit” notices to vacate.
- In certain circumstances, a “pay or quit” notice may support an eviction but other notices must have been sent to the tenant demanding payment of past due rents **prior** to giving the tenant the “pay or quit” notice to vacate. [See Section 24.005\(i\) of the Texas Property Code.](#)

**8** Provided the Notice to Vacate specifically states that it is unconditional, invitations for the tenant to come in and talk about a resolution does not void the unconditional requirement of this notice.

9 Check to make sure the date of the notice and the date you are seeking possession are accurate. Be sure the move out date is the appropriate number of days from the date the notice is given to the resident(s). For example, a three (3) day notice to vacate should not be dated Jan. 1 with a Jan. 2 move out date

10 Delivery method of the notice to vacate is vitally important.

a. DO NOT mark that it was delivered **all** the possible ways it can be delivered:

- \* hand delivered to any one of the residents named above
- \* hand delivered to any person 16 or older residing in the dwelling
- \* posted on the inside of the dwelling's main entry door
- \* sent by regular mail
- \* sent by certified mail, return receipt requested
- \* sent by registered mail

We generally like the person who delivered the notice to attend trial so they have personal knowledge of how the notice to vacate was delivered to the tenant in case the tenant disputes the delivery method.

11 If you are only delivering the notice to vacate by taping it to the tenant's door, it must be taped it to the **INSIDE** of the tenant's main entry door.

- \* If the dwelling has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents you from entering the premises to leave the notice to vacate on the inside of the main entry door, you may securely affix the notice on the **OUTSIDE** of the main entry door. [See Section 24.005\(f\) of the Texas Property Code.](#)
- \* However, if you leave the notice taped to the outside of the tenant's front door, the tenant will inevitably tell the Court that they did not get the notice and this "he said she said" issue can cause you to lose the eviction. Thus, if the dwelling's keyless deadbolt is locked and you cannot get into the unit to tape the notice to the inside of the front door, you can tape the notice to the outside of the door but it is best in this situation to also send the notice by mail if the apartment has a mail box.

12 If you send the notice by mail, please send it with at least a delivery confirmation with the U. S. Postal Service so you can prove to the court that the notice was delivered to the tenant. By sending the notice to vacate via delivery confirmation, the postal service will provide the specific date and time it was delivered to the address on the envelope, and this information can be printed out from the internet. Please note that many times, tenants do not sign for or pick up certified mail return receipt requested and it usually takes the postal service a long time to return to you the envelope that was not picked up by the tenant. We recommend that if you are going to send

the notice to vacate by mail, you send it both via delivery confirmation and certified mail return receipt requested.

- 13 Make sure that the person to whom you are handing the Notice to Vacate actually resides in the apartment and is not just a guest.