

# EVICTIION INFORMER

MESSAGE FROM THE PRESIDENT:

## EVICTIION MIXED BAG: THINGS TO KNOW

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**The Eviction Informer is a bi-monthly newsletter produced by Southern Nevada Eviction Services. Please feel free to distribute it to industry professionals who may be interested in learning more about the eviction process.**

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This month, I wanted to address several issues which we have repeatedly been asked about in the past few months and which impact property managers and owners. Hopefully this eviction smorgasbord will help you to stay out of trouble with the courts.

**BANKRUPTCY**

With the continued economic decline, more tenants are failing to pay rent and more tenants are filing for bankruptcy. Under Section 362 of the United States Bankruptcy Code, once an individual files for bankruptcy, there is an “automatic stay” on all collection activities against the debtor. This means that creditors may not file a collection action against the debtor and may not initiate or continue an eviction proceeding against the debtor/tenant. The stay applies to all creditors listed in the bankruptcy and goes into effect even before the creditors are notified of the bankruptcy.

Property managers/landlords that violate the stay are

subject to stiff monetary fines by the Bankruptcy Court. It is therefore crucial that you immediately cease any attempts to evict the tenant during the pendency of the bankruptcy proceeding. In addition, the stay covers not only evictions based on a failure to pay rent but also evictions related to a Thirty Day No Cause Notice. Evictions based on nuisance violations are exempted from the stay. However, be aware that the Justice Court will closely scrutinize the nuisance eviction to ensure that a true nuisance is

present and that the case is not simply an attempt to circumvent the automatic stay.

**UTILITIES**

We have seen many owners, disgusted with a tenant’s failure to pay rent and utilities, turn off utilities in the rental unit. Such action is fraught with danger. Under NRS 118A.380, a tenant may withhold rent for a landlord’s failure to provide “essential services”. “Essential services” are defined as including utilities when

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## THE NUISANCE OF THE 3-DAY NUISANCE

BY: DONNA YOUNG, DIRECTOR OF OPERATIONS

Your tenants are causing problems, the neighbors are complaining, the HOA is issuing warnings, the city is issuing citations for code violations – but the tenants ARE paying the rent. What can you do? The 3 day nuisance notice is the first

step in terminating a tenancy for cause (other than for failure to pay rent). Since this is an eviction “for cause” you must have a reason for the 3 day notice. The reason given must be specific enough to allow the tenant to correct the problem.

**Reasons for 3 day notices:**

The 3 day reason should be either 1) life threatening, 2) damage to property, 3) illegal activity on the premises, or 4) a lease violation. For

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## EVICTION MIXED BAG (CONTINUED)

provided by the landlord. Therefore, if the utilities are in the name of the landlord, regardless of whether the tenants have failed to turn the utilities on in their name or whether the tenant is obligated to reimburse the landlord for the cost of utilities, the landlord must keep the utilities on. Failure to do so will likely result in the summary eviction being denied by the court and the tenant initiating (and winning) a lawsuit against the landlord for damages caused by the turned-off utilities.

**LAS VEGAS FIVE DAY PAY OR QUILTS ARE NOW FIVE DAYS**  
Starting in November 2010,

the Las Vegas Justice Court decided that Five Day Pay or Quit Notices and Five Day Unlawful Detainer Notices are five business days in length. Previously, the landlord had to wait eight business days before filing the eviction. Now, the landlord need only wait five business days. For purposes of counting, a "business day" is Monday through Friday, excluding federal and state holidays.

**NORTH LAS VEGAS CHANGES PROCESS REGARDING SCHEDULING HEARINGS**

Starting immediately, the North Las Vegas Justice Court is changing the way they handle tenant hearings. In the past,

once the tenant requested a hearing following a Five Day Pay or Quit or Five Day Unlawful Detainer Notice, the Court would immediately schedule a hearing date and notify the landlord. This could result in the hearing actually being held prior to the expiration of the Five Day Notice. However, the Court has now moved to a system similar to Las Vegas and Henderson – the landlord will not be notified of the hearing until the landlord files his eviction paperwork with the Court.

**EVICTION FACT:**

A tenant is obligated to pay rent to his landlord, regardless of whether the house is in foreclosure. As long as the tenant remains in the property and the house is not sold at auction, the tenant is obligated to pay rent and is bound by the lease. Be aware, though, that under NRS 118A.275, a property manager/landlord is obligated to give written notice to prospective tenants that a house is in foreclosure and failure to do so is a deceptive trade practice.

## THREE DAY NUISANCE NOTICE (CONTINUED)

example, a 3 day notice may be issued for behavior which interferes with the comfortable enjoyment of life or property, including actions injurious to health, or indecent and offensive behavior. This can include excessive traffic, loud noise, objectionable odors, violent or threatening behavior. In addition, you may use this notice for a serious lease violation, such as the tenant has not turned on utilities in his name, or for unauthorized occupants or pets.

**Claiming money on a 3 day notice:**

Although a 3 day notice cannot be used for non-payment of rent, there are instances where a 3 day notice can be issued if the tenant owes you money. Specifically, you may use a 3 day notice for unpaid security deposit (unpaid security deposit cannot be put on a

pay or quit notice). You may also use a 3 day notice when a tenant owes money, for utilities for example, but does not owe rent.

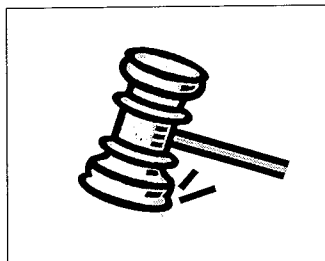
**Wording is critical:**

Be cautious about the wording on a 3 day nuisance for a problem that could be construed as the landlord's fault. For example, a tenant may keep the rental property such poor condition that it attracts pests. However, it is a landlord's responsibility to ensure the property is

pest-free. In this case, you would issue a notice for unsanitary conditions without mentioning the pests.

**Next steps:**

If the tenant has not corrected the problem within 3 business days, you must follow up with an unlawful detainer notice in order to continue the eviction process. The unlawful detainer period is counting the same as a pay or quit notice in each jurisdiction (Las Vegas – 5 business days, North Las Vegas – 8 calendar days, Henderson – 5 business days (not counting Fridays)). As with a Pay or Quit situation, a tenant may request a hearing at the Justice Court so be able to defend your position and have as much documentation as possible.



VISIT OUR WEBPAGE AT [WWW.VEGAS-EVICTIONS.COM](http://WWW.VEGAS-EVICTIONS.COM) TO LEARN MORE ABOUT THE EVICTION PROCESS AND TO READ OUR BLOG

Have a story suggestion or a landlord-tenant subject you would like to learn more about? Let us know and it may be addressed in an upcoming issue!