

# EVICTION INFORMER

MESSAGE FROM THE PRESIDENT:

## CASE STUDY: THREE DAY NOTICE --

### HE SAID/SHE SAID

As I often represent clients in court, starting in this issue, I will be sharing interesting case studies with you which may help in your eviction efforts. This month's case study addresses the Three Day Nuisance Notice and when is it appropriate to file a formal civil eviction rather than a summary eviction. In this month's case study, the landlord owned two condominiums; she rented out the top condominium and lived in the lower condominium. According to the landlord, the tenant had several loud altercations with her boyfriend (including one in which the police were called), had visitors at all hours of the night, and generally disturbed other neighbors. Since the landlord witnessed all of this activity, she issued a Three Day Nuisance Notice for disturbing the peace and creating a dangerous situation for her neighbors.

The tenant refused to comply with the Notice and a summary

eviction was filed. Then, the tenant contested the eviction and a hearing was held. Since the landlord had personally witnessed the incidents in question, and since the police had been called in one instance, we believed that we had a strong case at the eviction hearing. The tenant admitted that the police had been called

once but denied the remaining allegations.

Although we had a strong case and eyewitnesses, the court denied the eviction. The judge stated that a summary eviction was not appropriate in this case since a "material question of fact or law" existed. Under the Nevada

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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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## DEALING WITH FORECLOSED PROPERTY

BY: DONNA YOUNG, DIRECTOR OF OPERATIONS

The passage of the "Helping Families Save Their Homes Act" in May of 2009 changed the procedure for evicting occupants of post-foreclosure properties. Over the course of the past year, we have seen some changes in how the local courts have been

interpreting and implementing this new law.

### Change of Ownership Notice

Recently, the courts have required proof that tenants in foreclosed properties have received an appropriate

change of ownership notice before the court will consider an eviction for any reason. This means that this change of ownership notice must precede a Pay or Quit Notice and must be given in conjunction with a 90 Day

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## THREE DAY NOTICE (CONTINUED)

Revised Statutes and applicable case law, a summary eviction cannot be granted if the tenant puts forth a "valid legal defense" or if there is a legitimate question of fact or law. Consequently, the judge ruled that while we could still bring a formal civil eviction action, the summary eviction would be denied. The tenant continues to live in the property to this day.

The important lesson to take from this case is that a summary eviction should be initiated only when the facts of the case are clear-cut and easily provable. While evictions based on failure to pay rent are usually straightforward (the

tenant either paid the rent or did not), summary evictions based on nuisance notices are much harder to prove. When considering whether to file a summary eviction or civil eviction, look at what type of evidence you will need to prove your case. If the evidence is incontrovertible (landlord issues notice for drug possession after tenant is arrested for drug possession in the rental property), a summary eviction is appropriate. If the hearing will come down to conflicting testimony (one witness states that tenant's children were destroying property while the tenant will state that her children were home at the time), you should

consider filing a formal civil eviction.



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 TO LEARN MORE ABOUT THE  
 EVICTION PROCESS AND TO  
 READ OUR BLOG

**EVICTION FACT:**

**A person is considered a "tenant" under the eviction laws regardless of whether he is obligated (or has ever) paid rent to the landlord or whether he had a written lease agreement. Therefore, even if your tenant allowed the person into the property without your knowledge, you must still utilize the eviction process to remove him.**

## FORECLOSED PROPERTY (CONTINUED)

**Post-Foreclosure Notice.** The change of ownership notice must include information about the new owner: name and contact information, as well as information about where the tenant should submit rent payments. The notice must also inform the tenants that 1) their lease, if any, continues in force, and 2) a failure to pay rent may result in eviction. This notice may request that the tenants provide a copy of any current lease signed with the previous owner, but note that the tenants are not required by law to produce the lease.

**Notice Requirements**

Under the new law, the immediate subsequent purchaser (i.e., purchased the property at auction or purchased from the bank after the auction) of a foreclosed property may not evict, except for cause, a tenant residing in the property if the tenant had an

on-going (non-expired lease) with the previous landlord/owner. Basically, the new owner purchases the property subject to the lease. If the tenant did not have a current lease, is month-to-month or at will, the new owner must give the tenant a 90 Day Notice to Vacate. This would be followed up with a 5 Day Unlawful Detainer Notice.

If the person occupying the house is the previous owner, a 3 Day Foreclosure Notice would be used, also to be followed by a 5 Day Unlawful Detainer. Keep in mind that any and all notices should be issued only after the deed is recorded.



**Civil Eviction Filing**

The local courts are not allowing summary eviction filings in post-foreclosure cases; a civil eviction must be filed after either a 3 Day Foreclosure or 90 Day Notice. Once the civil eviction is filed with the court, the court will usually take several weeks to process the paperwork before a court date is set. As of now, the court dates are being set 5-6 weeks in the future. After a date is set for the hearing, the tenant must be served with the Complaint and a Summons to Appear at least 11 days prior to the hearing date.

As with any eviction proceeding, it is critical that all information on the notice and filings is correct, properly served, properly notarized and witnessed as appropriate.

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