

# EVICTION INFORMER

MESSAGE FROM THE PRESIDENT:

## THIRTY DAY NOTICES: TRAPS TO AVOID

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The Thirty Day No Cause Notice can often be the most reliable method for evicting an unruly tenant, or one who has simply overstayed his or her welcome in the rental property. Pursuant to NRS 40.251, a landlord may issue a Thirty Day No Cause Notice either to coincide with the conclusion of a rental agreement or at any time after the agreement has expired. It is particularly useful as it is a "no cause" notice, meaning that the landlord does not have to prove any default or nuisance by the tenant. Should the tenant not vacate by the conclusion of the notice, the landlord may post an Unlawful Detainer Notice and then file a summary eviction. However, many landlords have improperly used the Thirty Day Notice resulting in the dismissal of their eviction. Therefore, it is important for landlords to avoid common pitfalls of the Thirty Day.

**The "Casual" Thirty Day**

Since landlords and property managers often inform tenants at the end of their lease



term that the tenant must vacate the property, landlords often draft "informal" Thirty Day Notices which are not legally sufficient. NRS 40.251 contains certain language which must be included in the notice. In addition, NRS Chapter 40 requires that the notice be served in a specific manner similar to all other eviction-related notices. Thirty Day Notices are under the same rigid requirements of all other types of eviction notices and, if not properly drafted and served, may not be used to evict the tenant. Therefore, if you are drafting your own

notice, make sure you follow all of the NRS and court requirements.

**When The Tenant Serves the Thirty Day**

It is often the tenant who first notifies the landlord/manager that he does not intend to remain in the property at the conclusion of the lease term by serving a Thirty Day Notice on the landlord. However, problems begin when the tenant decides not to move at the end of the thirty day period. A landlord may not use a Thirty Day Notice served by

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## EVICTION TERMS: KNOW YOUR STUFF! BY: DONNA YOUNG, DIRECTOR OF OPERATIONS

It is common for individuals in the same business to sometimes use terms loosely because we assume that we understand each other. It is important, however, to ensure that when talking about a legal process such as evictions, we use the correct

terms. Here are some terms relating to evictions:

**NOTICES:**

5 Day Pay or Quit - The 5 Day Pay or Quit Notice is used for non-payment of rent. This notice period is counted as 5 business days in Las Vegas

and Henderson; 8 calendar days in North Las Vegas. When people say "5 Day", they are usually referring to a 5 Day Pay or Quit notice. 30 Day No Cause - Can be used only on monthly tenants

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## THIRTY DAY NOTICES (CONTINUED)

the tenant to evict the tenant. A landlord must serve his own Thirty Day Notice to evict the tenant. Therefore, it is always good practice, once you have received a Thirty Day from the tenant, to serve your own on the tenant. That way, if the tenant does not timely leave, you will be that much ahead in having him evicted.

### When The Tenant Leaves Early

Another situation ripe with pitfalls is when the tenant serves a Thirty Day Notice even though the lease has not yet expired. Clearly, a landlord cannot force a tenant to remain in the property if the tenant chooses to vacate. However, the landlord must also be

careful not to waive any damage claims that the landlord may have against the tenant.

Upon receiving the early Thirty Day, property managers may often send correspondence to the tenant stating that they received the notice and detailing the move-out procedures that the tenant must follow (*i.e.*, when to turn in the keys, when the move-out inspection will occur). As part of that letter, the landlord/agent should explicitly state that the landlord is not waiving the tenant's breach of the lease. This will allow the landlord to execute the move-out procedures while stilling giving him the opportunity to sue the tenant for breach of lease.

### When May a Thirty Day Be Given

As previously stated, a Thirty Day Notice may be served to coincide with the end of the lease term or once the tenancy becomes month-to-month. It may not be served during the pendency of the lease. Many property managers try to circumvent this requirement by stating, in their lease, that a Thirty Day Notice may be given during the lease period. However, under NRS 118A.220, such a provision will not be sustained by the courts.

### Rent During the Thirty Day Period

The tenant is obligated to pay rent during the thirty day period of the notice and a landlord may accept rent for that period.

### EVICTON FACT:

Once the tenant has been locked-out pursuant to a summary eviction, the constable's deputy will sign and date the Order for Eviction stating that the eviction is now complete. It is important for the landlord or agent to obtain the Order from the constable and to keep it safe. If the tenant breaks into the house, the landlord will need to send a copy of the Order to the police before they will remove the tenant.

## EVICTON TERMINOLOGY (CONTINUED)

and if the lease term is expired (or is about to expire). The notice period is 30 calendar days.

7 Day No Cause - can be used only on weekly tenants and if the lease term is expired (or is about to expire). The notice period is 7 calendar days.

3 Day Notice - sometimes called a "3 Day Nuisance Notice". This notice is used to begin the eviction process for situations other than non-payment of rent. The notice period is 3 business days in all jurisdictions.

Unlawful Detainer - The name of the Five Day notice posted subsequent to a Three Day, Thirty Day or Seven Day. Also, name of the more formal eviction process.

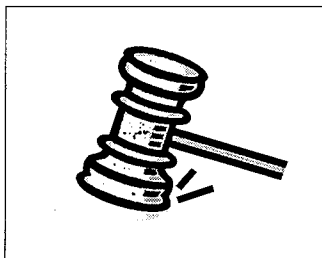
This notice always follows another notice (3 day, 7 day, 30 day). It is always the second step in an eviction process; it is never the first notice issued. The notice period is counted the same as

a 5 Day Pay or Quit Notice.

Post (A Notice) - One way to serve a notice. Involves taping the notice to the tenant's door. When a 3 Day, 5 Day, 7 Day or 30 Day Notice is posted, it must also be mailed. A 24 Hour Lock-out Notice is posted by the constable and is not mailed.

### COURT RELATED TERMS:

Summary Eviction - an expedited eviction process, which takes less time than a formal civil eviction. May not be used in post-foreclosure situations. This process



removes the tenant but does not grant a monetary judgment. The summary eviction filing is actually a packet of documents which includes an Affidavit of Complaint for Summary Eviction, Order for Summary Eviction, Instructions to the Constable, and copies of related notices and proofs of service. This packet is filed with the court and if the eviction is granted, the Order will be signed by the judge and sent to the constable with instructions for him to carry out the Eviction Order. The constable posts a 24 hour lock-out notice on the tenant's property and returns the following day to remove the tenants, at which time the locks must be changed. The filing has several nicknames: "eviction", "24 hour", "filing", "lock-out".

Hearing - a court proceeding in which a judge will make a decision whether to grant an eviction. The hearing is always granted when a tenant

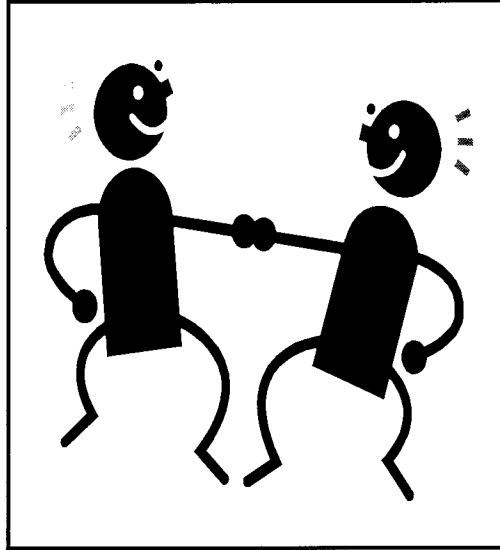
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 upcoming issue!

## THIRTY DAY NOTICES (CONTINUED)

However, particularly if the Thirty Day period concludes mid-month, the landlord may not accept rent for a period after the thirty day period. Accepting such rent would void the thirty day notice and would require the landlord to begin the process again.

The Thirty Day Notice is an effective means for terminating the tenancy and removing a tenant. However, property managers must be careful in how they execute the Thirty Day Notice to ensure that it is acceptable as part of the overall eviction.



### EVICTION FACT

The imprisonment of a tenant does not automatically terminate a lease or give the landlord the right to enter the premises. Unless the tenant specifically confirms in writing that they will not be returning to the rental property, you must still follow regular eviction procedures.

## EVICTION TERMINOLOGY (CONTINUED)

“contests” (see “contest”) a 5 Day (Pay or Quit or Unlawful Detainer). A hearing may be granted if the tenant files a motion to stay eviction.

File – deliver to the court for processing.

Eviction Order – an Order, signed by a judge, which authorizes the Constable to remove tenants from a property. This will only be signed after the Affidavit of Complaint for Summary Eviction is filed with the court.

24 Hour Lock-Out Notice – A Notice posted by the Constable, informing tenants that the Constable will be back within 24 Hours to remove them from the property. This notice will only be posted after the Eviction Order has been signed by a judge.

Contest – The process

whereby the tenant brings a served 5 day notice to the Justice Court and requests a court hearing. A hearing will automatically be granted and the landlord will be notified of the date.

Appeal – Within ten days after the Eviction Order is signed, a tenant may appeal the case from the Justice Court to the District Court, asking the District Court to overturn the eviction order. The District Court reviews the paperwork and decides whether to hold a hearing on the matter. People sometimes use the term “appeal” to refer to any hearing request from the tenant, but that is technically not accurate.

Motion to Stay Eviction – Once the eviction order has been signed, but before lock-out, the tenant may file a Motion to Stay Eviction. This is the tenant’s request for more

time or for a hearing (even if he’s already had a hearing). This motion may or may not be granted by the judge. Some of the nicknames for this Motion are “stay” or “stay of eviction”.

Lock-Out – After the Eviction Order is signed and the 24 Hour Lock-out Notice is posted, the Constable or his deputies will remove the tenants from the property. The property locks must be changed in the presence of the Constable or his deputies.

### MISCELLANEOUS:

Business days - Days that the court is open in a particular jurisdiction: Monday through Friday in Las Vegas and North Las Vegas; Monday through Thursday in Henderson. Weekends and holidays are not business days.

Tenant – Any individual who, at some point, has been given per-

mission to occupy real property. This can include tenants, subtenants, long-term visitors, and assignees. It is immaterial whether the individual is named in a lease or pays rent. A tenant can only be removed from rental property through the use of the eviction process. Rent – Fixed amount paid regularly by the tenant for use of the rental property. Amount is generally stated in the Lease. Does not include any amounts paid toward the security deposit or an option to purchase the property. For commercial properties, can include CAM charges.

In order to avoid misunderstanding, it is important to use the correct terminology in order to ensure that everyone involved is talking about the same thing.