

EVICTION INFORMER

MESSAGE FROM THE PRESIDENT:

UPDATE ON POST-FORECLOSURE

EVICTIONS

In a recent edition of the Eviction Informer, we introduced you to the new federal and state laws regarding the treatment of former owners and tenants in foreclosed properties. Since that time, the Justice Courts have made several rulings on various aspects of these issues that warranted an update. While none of these developments are the result of new laws, they represent the policies of the various courts.



Obligation to Pay Rent

Under federal law, former tenants in foreclosed properties are obligated to pay rent to the new owner once the tenant has been served with a change of ownership letter. Although the duty to pay rent is automatic once the change of ownership letter is served, the courts have consistently held that the duty to pay rent does not begin until the following month. The courts have held that since the tenant did not know where to

send the rent for the current month, the tenant cannot be held liable for failing to pay the current rent.

It is therefore critical for purchasers of foreclosed properties to expeditiously record their new deeds and to send their change of ownership letter. Since receipt of the letter triggers the obligation to pay rent, the new owner wants

the tenant on notice as soon as possible so that, once the new month begins, the tenant knows where to pay his rent.

Setting Rent Levels for Foreclosed Properties

Another question which arises is the level of rent payments. Under federal law, the tenant is obligated to pay the new owner the same rent amount as was

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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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TO SUE OR NOT TO SUE

BY: DONNA YOUNG, DIRECTOR OF OPERATIONS

Once a tenant has been evicted or otherwise left your property, you may want to consider suing to recover damages. The summary eviction process does not give you a monetary judgment; you will need to file a separate

lawsuit to get your money. The first step is to determine how much you need to sue for: total all unpaid rent due and eviction fees plus any damage to the property, minus any security deposit you may have. If the total due is \$5,000 or

less, you can sue in small claims. If the amount is over \$5,000, you can waive the amount over \$5,000 or you can file a traditional civil lawsuit. There are some benefits to using the small claims process:

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NEW EVICTION RULES (CONTINUED)

paid to the previous owner. However, nothing in either federal or state law requires the tenant to disclose what that rent amount is. In those instances where the tenant refuses to provide proof of his previous rent amount, the new owner should charge fair market value rent and issue a Pay or Quit Notice for failure to pay that amount. If the tenant contests the notice, the Court will require the tenant to either prove his previous rental amount or, if the tenant cannot, to pay the fair market value of rent. In some instances, a tenant may provide a seemingly valid lease with a zero or minimal monthly rental amount. While it is apparent

that the lease is not an arms-length transaction, the Courts will generally not alter the rent amount for purposes of payment of rent. However, the Courts will generally allow the owner to "break" the lease and to issue a Ninety Day Notice to require the tenant to vacate the premises.

Evictions for Unpaid Rent

As previously discussed, federal law states that, upon service of the change of ownership notice, the new landlord obtains all rights and obligations of the previous landlord in regards to the tenant. This means that the new owner should have all of the normal eviction rights, particularly the Pay or Quit Notice and the summary eviction,

in addressing a tenant's failure to pay rent. However, the North Las Vegas and Henderson Courts have ruled that the new owner may not utilize a summary eviction for failure to pay rent. Instead, the new owner must utilize a formal civil eviction. This means that the parties would have a mandatory hearing approximately 4-7 weeks after filing the eviction to determine whether the tenant should be evicted.

Summary

Once again, these new rules place the new owner at a further disadvantage. These rules deny new owners rent that is due them, complicate the process and benefit those tenants who act in bad faith.

EVICTION FACT:

Under Nevada law, ghosts and goblins are considered "tenants" for purposes of the eviction laws. If a ghost has possessed rental property which you manage, you may utilize a Three Day Boo-Suance Notice followed by a Five Day Undead Detainer Notice and a Summary Exorcism. However, if the rental property is inhabited by vampires, there is new federal law requiring special service of the notice only from sundown to sun-up.

HAPPY HALLOWEEN!

TO SUE OR NOT TO SUE (CONTINUED)

you will have a hearing sooner than if you file a civil lawsuit; the process is less formal than a civil lawsuit; and it would cost less to litigate. You will not be awarded attorney's fees in a small claims case. However, if you win, you will receive the court filing fee and service of process fee, in addition to the \$5,000 limit.

To begin the small claims process, once you have determined how much is owed you, you must send a demand letter to the debtor. The demand letter must include the total amount demanded, with a breakdown of what is owed.

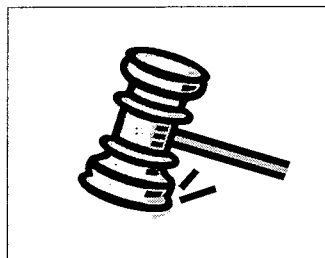
If the debtor does not pay, you may file the small claims case. Once you have filed and a hearing date has been set, you must have the debtor served a summons to appear in court. It is imperative to know where

your ex-tenant lives or works, since without that information it will be impossible to have him served. Service may be accomplished at a home or work address, but it must be personal service (summons must be handed to the debtor). Realize that if you cannot find the tenant to serve him, the case may be dismissed. There is a provision for serving notice by certified mail, but that requires permission from the court and will involve additional court filings. Also, keep in mind that in order to accomplish service by certified mail, the

defendant would have to sign for the mailing.

If you are successful at the hearing, you will receive a monetary judgment and will have to try to collect. You may put a lien on property (if the debtor owns any) or you may garnish wages. Be aware that some of the debtor's income may be exempt from garnishment.

In conclusion, before you decide to sue, you will want to weigh the likelihood of successful service and collection of debt against time and cost of pursuing a case. Unfortunately for creditors, it is not always possible to collect money due.



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