

## WHEN SERVING NOTICES, “GOOD ENOUGH” ISN’T

Notices are never properly served when they are solely posted on the front door to the rental premises. If you stop reading my article right now, you’ve already gleaned the most crucial point of this column.

If you’re bravely continuing on with my inelegant prose, first go back and re-read the initial sentence one or two more times before you proceed. Rarely do attorneys get that quickly to the point, so when we do it must be important.

There are many habits in property management. Some are good business practices and others do not affect the task at hand as long as the task itself is accomplished. There are, however, certain practices and procedures that are detrimental to the management of residential rental property. Perhaps the most harmful to proper management is the procedure by which far too many notices of lease breach are issued to residents – the simple “left at the front door” method. Under every conceivable rule, regulation, or statute, this constitutes ineffective service.

The “Notice” statute in the Arizona Residential Landlord and Tenant Act declares that there is only one method to properly serve the Resident:

in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the communication or, in the absence of such designation, to his last known place of residence.

A.R.S. § 33-1313(B). Note the two methods by which service may be effectuated – either “delivered in hand to the tenant” or “mailed by registered or certified mail to him at ... his last known place of residence.” Nowhere in this statute, or elsewhere in the Act, is simple posting permitted.

The method of service is important for two aspects of the eviction litigation process. First, the landlord may terminate a resident’s tenancy only after giving that tenant adequate notice of the breach in question. The notices must satisfy the “five ‘W’s” in order to make a valid legal demand. The landlord must inform the resident (“who”) in writing about the breach (“what”) for the reason in question, such as rent (“why”), for the premises in question (“where”) and by what date it must be cured ere you, the landlord, will terminate the resident’s tenancy (“when”). A written notice encapsulating the details of all five “W” terms will satisfy the basic requirement for the form of the notification. There is a second portion to this aspect, and without it the form of the notice is irrelevant: proper delivery of the notice, in the manner described in the paragraph above. The failure to comply with the service requirement renders the otherwise valid notice void on its face. A void notice – i.e., one that was not properly delivered to the resident – has no legal or practical value

to the landlord.

Second, in bringing an action for eviction, the landlord (or its attorneys) must avow to the court that the notice was delivered to the resident as required by law. This requirement is encapsulated not only in the Arizona Residential Landlord and Tenant Act but also inside the “new” Rules of Procedure for Eviction Actions. Set forth in Rule 5(a), a landlord must state in the eviction complaint “that the defendant was served a proper notice to vacate.” The lack of this required statement will cause the lawsuit to be dismissed.

Aside from the technical requirements of notice delivery, there remains the underlying duty of good faith toward the other party. If management does not properly notify the resident about the breach, the resident does not have the opportunity to cure the deficiency. Surprising a resident with service of an eviction lawsuit (which has more stringent requirements than the service of notice) when the breach was not previously identified is neither “fair play” or equitable.

There is a very tempting reason to serve notices through posting alone: cost. If personal service – to the resident or someone inside the premises of reasonable age and discretion – cannot be made, sending a notice by certified mail has both a monetary cost as well as a time cost. Taking this shortcut, however, saves time and money only in the short run; lawsuits filed on “bad” notices will waste substantially more resources as well as damaging the landlord’s standing before the judges who hear eviction cases. A landlord with a reputation for cutting corners will find his or her credibility at court reduced and will frequently find himself or herself cut off at the knees on “close” disputes with residents.

Lawyers and landlords have an unjustified reputation with certain segments of the population. Just as people like to paint all lawyers as unscrupulous shysters, they also like to describe property owners and managers as greedy slumlords. A handful of bad apples have tainted both professions, but just as the State Bar of Arizona seeks to hold its members to higher standards, the AMA requires its members to be exemplars of the profession. The members’ code of conduct requires that property management operations be conducted “in a straightforward and honest manner.” Cutting corners with notices does not meet this duty, nor does it comply with a landlord’s legal duties.

Serve your notices to the resident or via certified mail. It’s the only legal method, and anything less than that is an act of fraud not only upon your residents but also your clients.