

To Landlords requesting Constable to serve their Notice to Vacate:

Chapter 24 of the Texas Property Code governs evictions in this state. To start an eviction proceeding, a landlord must give notice to the tenant in writing for them to vacate the premises. Due to some notices in the past not being given in accordance with law, the court will sometimes look at the manner in which a Notice to Vacate was given to the tenant in certain cases. A Notice that does not meet the legal requirements, when presented to the court to support the eviction, is a fatal flaw in your case and will most likely result in the case being dismissed and all the associated loss of time and expense of the filing wasted. You would then have to start the process all over again. Another notice of a minimum of 3 days in the proper manner would have to be delivered to the tenant and then the case refiled afterwards.

Notice methods under the Texas Property Code that you must comply with or risk losing your case:

- 1) Notice given in person to the tenant or any person residing at the premises over the age of 16 years or delivery to the premises by affixing the Notice to the **INSIDE** of the main entry door
- 2) Notice may be given by mail at the premises by First Class, Registered or Certified Mail (w/Return Receipt)

Above are the 2 methods of providing notice in the Property Code. There is an exception to these methods if special circumstances exist as outlined in Sec. 24.005 (f-1) of the Property Code below:

The exception applies **ONLY IF THE PREMISES** has **no mailbox** and **has a keyless bolting device, alarm system,** or **dangerous animal** that prevents the landlord from entering the premises to affix the Notice to Vacate to the inside of the main entry door; or the **landlord reasonably believes that harm to any person would result** from personal delivery to the tenant or a person residing at the premises or from personal delivery to the premises by affixing the Notice to the inside of the main entry door.

- A) An alternate method (under f-1) of giving notice may be by a landlord delivering the Notice to Vacate by securely affixing to the outside of the main entry door a sealed envelope that contains the Notice and on which is written the tenant's name, address, and in all capital letters, the words "IMPORTANT DOCUMENT" or substantially similar language and, not later than 5 p.m. of the same day, depositing in the mail in the same county in which the premises in question is located a copy of the Notice to the tenant.

If your notice was given under Method A (f-1) above, you may have to explain to the court why it wasn't done under Method 1 or Method 2 above and what the special circumstances were that existed which caused you to use method A. If use of method A was not justified, your case could be dismissed and you would have to start all over again.

\$20.00 Fee: Effective immediately, the \$20 fee that has been customarily paid to the constable will engage his services under method #2 above and the constable will furnish the landlord a "Certificate of Mailing" by return mail that provides evidence that can be used in court that the Notice was sent according to the law. This means a 3 day notice will also have to allow 3 days for the mail to run so giving the Notice to the constable to handle means you will have to wait the number of days you give tenant to vacate (minimum of 3) plus 3 more days before you can file your eviction.

\$30.00 Fee: If you want the constable to make 1 attempt for personal delivery to the premises under Method #1, the fee will be \$30. Upon making the attempt, if unsuccessful, the service will revert to Method #2. Landlord will be furnished a copy of the completed Notice or a "Certificate of Mailing" by return mail indicating to him which method was successful. You would then file your eviction case based on your copy from the constable of either personal service (number of days given after the notice was delivered) or the report of mailing (number of days given +3 days for mail).

All landlords can serve the Notice to Vacate themselves - services of the constable are not required but the constable will handle the Notice to Vacate in a manner prescribed by law which should pass the scrutiny of the court and should not endanger your case. Constable will not deliver any f-1 notices under Method A above.

Notice to Vacate rules changed in the 84th Texas Legislature – See Texas Property Code Section 24.005 for complete information

NOTICE TO VACATE

TO: _____

ADDRESS: _____

As required by § 24.005, Texas Property Code, you are hereby notified that _____ days after delivery of this written notice, I demand possession of said property listed above, now occupied by you, which you illegally detain from me. Unless you vacate at once, I shall proceed to repossess said property as listed above which you illegally withhold from me and which you owe \$ _____ for rent thru _____ day of _____, 20____, and/or for the reason(s) listed herein:

I HEREBY DEMAND that you pay all past due rent and vacate the property at once or I shall proceed against you as the law directs.

SIGNED this _____ day of _____, 20____.

Print Name

Signature

Print Address

Telephone

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NOTICE TO VACATE served on _____ day _____, 20____, at _____am / pm, by:

- 1. by delivering a true copy of this notice to Defendant in person.
- 2. by leaving a true copy of this notice with _____, a person over the age of 16 years, at the usual place of abode of defendant.
- 3. by posting this notice to premises in accordance with law.

SERVED BY: _____