

Serve The Notice

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 Sunday, 25 March 2007
 Last Updated Monday, 26 March 2007

Improper service of the notice is one of the most common causes of an owner losing an eviction. There are three basic methods: (1) personal delivery to someone at the premises (sometimes also requiring sending the notice by regular mail) and (2) service by certified mail and (3) service by tacking the notice on the door and mailing

Tip: Service of an eviction notice on one tenant counts for service on all of them (for example, you serve one of four roommates who share an apartment).

Potential Problem: This does NOT apply to service of the eviction summons, where you need to serve all the tenants personally if you want to get a money judgment against each of them.

Potential Problem: Service of the summons and complaint, which will be discussed later, has slightly different requirements.

Tip: You can hire a professional process server to deliver the notice to the tenant. This saves you from potential confrontation and usually eliminates errors in service. These services are listed in the yellow pages and in the AASEW member directory.

Tip: We provide process service in Milwaukee County for \$25 through our EasyEvict.com . You can fax or deliver the papers to us and even do the entire process on line. Personally handing the notice to the tenant is the most common method. This is not always practical because of safety concerns or because the tenant is hiding from you. The Wisconsin statutes allow you to make in person service of the eviction notice as follows:

- Give a copy to one of the tenants.
- Give a copy to a family member at least 14 years old, telling them that this is an eviction notice.
- Leave a copy with an occupant (e.g., the boyfriend of the tenant) and also mail a copy by regular mail to the tenant
- Leave a copy with a "competent person apparently in charge of the rented premises" (e.g., the boyfriend's sister who is babysitting the tenant's children) and mail a copy by regular mail to the tenant.

Tip: ANY of the above 4 methods of personal delivery can be used. You don't have to use "reasonable diligence" by trying to catch the tenant herself at home. For example, you arrive to deliver the eviction notice, the boyfriend says the tenant is shopping and will be home in an hour and you should come back. You can simply serve the boyfriend and drop the notice in the mail that day. Do it the same day, otherwise the day of mailing counts as the effective day notice was given.

Tip: Many owners find personal service provides the best results as far as collecting or getting the tenant to move on their own. People who are behind on rent may avoid contacting you out of embarrassment. Or, you may find the unit vacant when you go to serve the notice.

Tip: Make sure that the person the notice is given to is a family member or is actually in control of the premises. A babysitter probably does not meet the requirement, while a roommate not listed on the rental agreement meets these requirements. If you are serving on a family member make sure they are at least fourteen. I had one eviction dismissed because I served a tenant's daughter who said she was fourteen, but in reality did not turn fourteen until a week after the date of service.

Certified Mail is the second method.

Potential Problem: This is only for the 5, 14 or 28-day notice. You may not use certified mail for a summons or complaint. If I'm repeating myself, it's because it is important.

Potential Problem: If you serve the notice by certified mail you must add two days to the time period. Tip: Many owners find service by certified mail is the easiest. It is acceptable from the standpoint of the court.

Tip: Often tenants who are behind on their rent do not accept the certified mail. This does not affect your ability to evict. The law requires you to send the notice, it does not require you to prove that the tenant accepted the notice. For this reason we do not use a return receipt as it could raise an issue which is not relevant.

Tip: It is also helpful to mail an additional copy by regular mail at the time that you mail the certified copy. This is not required but anything that makes the tenant aware the eviction process has started could prevent the trouble and expense of a court eviction.

Tip: Save the cost of a "Return Receipt Requested". The law only requires the notice be mailed certified. If your certified mail receipt shows you paid for a return receipt but you never received it because the tenant did not pick up the certified letter the court may question why you don't have that receipt.

Tip: A lot of people who are having financial problems don't pick up their certified mail. Tenants that know they are about to be evicted often try to get current on their rent or move on their own, saving you the cost of an eviction. To assure that the tenant knows what's going on, always send a second copy by regular mail. If all else fails and you have used reasonable diligence in attempting to personally serve the tenant, a family member or occupant or person in charge, you may staple or tape the notice to the door and mail a copy by regular mail to the tenant.

Tip: Be sure you mail on the same day as you tack the notice to have that day count as the date of service.

Potential Problem: What is "reasonable diligence"? Every court commissioner and judge has a slightly different definition. Three attempts at service over three days at three different times is usually a safe bet.

Tip: If the tenant actually received the notice even though you didn't properly serve it (e.g., you gave it to the 12 year old son) then the notice is effective as of the day the tenant actually got it, but you have to prove this by "clear and convincing" evidence.