

EVICTION PROCEDURE GUIDELINES

The grounds for evictions can have several bases, the most frequent being either the expiration of the term of the lease, or breach of lease (failure to pay rent).

Eviction process typically begins with the issuance of a **Notice to Vacate**: tenant is given a notice to vacate the premises **within 5 days**. The notice should be dated but the notice should not provide a specific date. City Courts and Justice of the Peace Courts usually have a form for these notices.

3 Ways to Serve the Notice to Vacate:

- 1) **Giving the Notice to the tenant** in front of witnesses;
- 2) **Posting the Notice on the door** with witnesses' present (sometimes witnesses must also sign the Notice); and
- 3) Sending the Notice to the tenant via Certified Mail, Return Receipt Requested.

Prohibited Forms of Notice: text, regular mail, verbal, email, message.

A copy of the Notice must be provided by the landlord to the Court prior to or on the day of the eviction. Delivery must be proven. In the case of certified mail, the return must be signed by the lessee.

Defenses:

- **Acceptance of Rent:**
 - Lessor cannot accept any payments if notice is filed under non-payment of rent;
 - Partial payments of the rent, accepted by the Lessor or agent;
 - Landlord accepted 1 month of rent recently, but demanding back payments;
- **Lack of Notice:**
 - Personal notice (cannot be given to another resident); and
 - Notice must be given to all tenants of the residence.

Waiver: Some lease contracts include a waiver clause, whereby lessees waive their right to the Notice to Vacate. See LA. C.C.P. Art. 4701 and 4731. The landlord must still prove the waiver by presenting a **signed** copy of the lease with the highlighted waiver. The lessee does not need to present in court at the time of submission of the waiver.

Eviction Judgment Issued - 24 Hours to Vacate: What are my options?

- **Appeal:** File an appeal under La. C.C. 4745 within 24 hours of the judgment.
 - Amount of suspensive appeal bond determined by court in sufficient amount to protect appellee against damage.
- **Get an Extension:** Petition for an extension of the 24 hour period to give more time to move out. (Appeal time limitations not affected)
- **Agreement:** Make an agreement with the landlord for another date. (Appeal time limitations not affected)

Impact of Moratoriums/Executive orders: Declaration to Halt Evictions:

- The Declaration does not end rent. Outstanding rent incurred will still be owed after the moratorium is over.
- Bring an original and/or copy of the Declaration to Court. It will not be provided for the tenant.
- The Declaration must be signed by the declarant/tenant/lessee.
- The Declaration can be filed with your Answer to Eviction prior to the hearing.
- The Declaration may be challenged at the hearing.

Evictions for Subsidized Housing - HUD Termination of Tenancy: (Notice Procedures 24 CFR 247.4, Eviction 24 CFR 247.6)

Notice to disabled persons must be accessible (audio, braille, etc.)

Basis must be in the lease or HUD Regulations.

Written Notice: 1) date of termination, 2) reasons in detail, 3) advise that enforcement may take place in court, if remains, 4) Advise 10 days to discuss termination with the owner 5) advise disabled have right for reasonable accommodation to participate in the hearing, 6) be in accordance with the lease and with state law, if for material noncompliance, 7) state the dollar amount of balance due and date of computation, if for non-payment of rent

Service: by mail at the unit address and hand delivery to adult answering door at the rental unit or posting the notice on the door/placing it through the door.

Evictions must rely on basis cited in the notice of termination, unless unknown at the time of the notice.

OTHER RELEVANT LOUISIANA EVICTION STATUTES:

Art. 4701. Termination of lease; notice to vacate; waiver of notice; Art. 4703. Delivery or service when premises abandoned or closed, or whereabouts of tenant or occupant unknown; Art. 4731. Rule to show cause why possession should not be delivered; abandonment of premises; Art. 4732. Trial of rule; judgment of eviction; Art. 4733. Warrant for possession if judgment of eviction not complied with; Art. 4734. Execution of warrant; Art. 4735. Appeal; bond; La R.S. 9:3261.1. Domestic abuse; La. R.S. 32:61. Rights of military personnel to terminate a lease.