

PREPARING A SEVEN DAY NOTICE TO CURE OR VACATE

The seven day notice to cure is a statutory notice required under Florida Statute 83.56 (2) when a tenant fails to comply with Florida Statutes 83.52 (Tenant's obligation to maintain the dwelling unit) or material provisions of the lease agreement, *other than the failure to pay rent*. Remember that only a three day notice can be used to demand the payment of rent. A seven day notice to Cure is appropriate when the tenant has unauthorized pets, guests or vehicles, has parked in an unauthorized manner, has failed to keep the premises clean and sanitary, has disturbed the quiet peaceful enjoyment of other tenants in the community or has failed to pay a sum that would not be considered rent, such as security deposit, redecorating fees, etc. This list of violations, however, is not exclusive, and your lease agreement may include other rules and regulations which, if ignored by the tenant, may also be considered a violation under the statute.

When preparing the notice, the statute suggests the appropriate language to be used:

“You are hereby notified that (cite the noncompliance). Demand is hereby made that you remedy the noncompliance within 7 days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without your being given an opportunity to cure the noncompliance.”

Note that the suggested form requires that you cite the noncompliance. You must be very specific in citing the violation of the lease. A general statement that the tenant is disturbing his neighbors has been found unacceptable by most Judges in Florida. For example, on Friday, December 26, 1997 at 11:30 p.m., the tenants in apartment #101, had a loud party. Music was blasting and people were out on the balcony and shouting at other tenants walking past the apartment. In preparing your notice, you would not want to state simply that they were disturbing the quiet peaceful enjoyment of their neighbors. Instead, you should explicitly state the violation, including the date, the time and exactly what the tenants and guests were doing.

It is also recommended that you include instructions in the notice for correcting the violation. If a tenant has a dog on the premises that has not been approved by management, you should inform the tenant first that the dog is a violation of a specific paragraph of the lease agreement. Second, you should instruct the tenant that in order to comply with the lease agreement, the tenant must qualify the dog for residency and pay the appropriate pet fees and deposit or, in the alternative, permanently remove the dog from the premises. In this instance, the tenant not only is fully informed of the violation, but also he has received instructions on how to comply with the notice.

Once you issue the notice to the tenant, the tenant has a full seven days to cure the violation, including weekends and holidays. This means that you may not issue a notice to vacate if the violation reoccurs during that seven-day period. In addition, you should not accept any rental payments during this seven-day time period. The reason for this is very simple: If you accept rent when you are aware of the tenant's noncompliance, you waive your right to evict the tenant for that noncompliance.

When you become aware of a tenant's noncompliance, it is essential that you act on it immediately. While you may be aware that you can issue the tenant a seven day notice to cure, you should also know that the tenant likewise can issue the landlord a seven day notice to cure for failure to abide by the statutes or the material provisions of the lease agreement. If you have received complaints from neighbors concerning a noise problem coming from one particular apartment but have chosen to simply ignore it, one of the surrounding neighbors may finally become so angry from the disturbance that she issues you a seven day notice to cure. Now you are placed in a very difficult situation because the statute does not permit you to demand a cure from the troublemaker any sooner than seven days! If the noise continues for even one day past the seven days as stated in the complainant's notice despite your best efforts, the complainant may be able to break the lease and move out without penalty.

When a tenant refuses to comply with the lease agreement or the statutes even after you issue the seven day notice to cure, you may now issue the tenant a seven day notice to vacate. The statute provides that the notice shall be substantially in the following form:

"You are advised that your lease is terminated effective immediately. You shall have 7 days from the delivery of this letter to vacate the premises. This action is taken because (cite the noncompliance)."

Once again you should be very specific about the violation, giving date(s) and time(s), if appropriate. The seven day notice to vacate of a continuing or subsequent violation must be consistent with the prior seven day notice to cure. For example, you cannot issue a seven day notice to vacate for an unauthorized pet if the prior seven day notice to cure was for unauthorized guests. There must be uniformity between the two notices.

As you may have notices, you must allow at least fourteen days before proceeding to eviction in cases that do not involve rental payments. There are instances, however, when the issuance of a seven day notice to cure is unnecessary and the landlord may immediately issue a seven day notice to vacate. Actions for which the tenant may not be given the opportunity to cure "include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act" in addition to acts of violence and/or illegal conduct that occur on the property. An example of conduct for which the tenant should not be given an opportunity to cure would include burglarizing another tenant's apartment or deliberately breaking windows in an apartment unit. In these types of cases, the danger and liability of continuing to allow these tenants to live on the premises would far outweigh any opportunity given to the tenant not to repeat the incident. In this situation, if the tenant does not vacate the unit within seven days, you may immediately begin proceedings to regain possession of the apartment unit.

These notices can be very useful tools if utilized properly. Important points to keep in mind include never accepting rent when you are aware of a violation and never issuing a three day notice when you have a seven day notice to cure or vacate pending.