

New Federally Required Language for Residential Eviction Notices – Penalties on Landlord if Not Included

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As a result of the COVID-19 pandemic, the Center for Disease Control (“CDC”) and the Consumer Financial Protection Bureau (“CFPB”) approved a host of additional protections for residential tenants who are facing eviction. To ensure that any tenant facing eviction is aware of these additional protections, the CFPB recently approved a new rule which requires landlords who wish to evict a tenant for non-payment of rent to send a notice informing the tenant of these protections. The notice is relatively simple, but it must inform the tenant that they may have additional protections from eviction pursuant to recently approved CDC regulations. The notice must be included with the initial eviction notice or provided on the day of filing an eviction complaint if local law does not require an initial notice.

A tenant has a private right of action against a landlord who fails to provide this notice, and the consequences for the landlord could be harsh if found liable. A landlord is liable for actual and statutory damages of up to \$1,000 for each individual case, or up to \$500,000 or 1% of the landlord’s net worth in the case of a class action lawsuit. The landlord must also pay the tenant’s attorney fees and costs. The landlord is strictly liable for any failure to provide the notice, which means the landlord can be held liable even if the failure to provide the notice was unintentional. There is, however, a narrow defense the landlord can raise if it can show that the failure to provide the notice was unintentional *and* occurred despite the

ATTORNEYS

Max J. Burbach
Gregory C. Scaglione

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landlord's regularly maintained procedures to prevent such failure.

The notice only needs to be provided if the reason for the eviction is for non-payment of rent. If the tenant is being evicted solely for other reasons, such as damaging the property, non-compliance with other lease provisions, etc., then the notice does not need to be provided. However, if non-payment of rent is one of multiple reasons for the eviction, then the notice needs to be provided. There are no specific requirements for how the notice is sent to the tenant, just that it be provided "conspicuously" and in a manner that the tenant is aware of its delivery. The best practice for the landlord would be to deliver the notice in a manner that provides proof of delivery. The CFPB does not require any specific language in the notice, only that it inform the tenant of the additional CDC protections. The CFPB has, however, provided sample language that the landlord, may but is not required to, use.

All residential landlords should be aware and implement procedures to ensure compliance with this new rule. Tenant attorneys in Nebraska frequently attend first appearance hearings and actively seek out violations of this and other requirements. If you are a landlord and have any other questions regarding your obligations under this rule or any other Nebraska or Federal law, please do not hesitate to contact Koley Jessen.

[1] <https://www.govinfo.gov/content/pkg/FR-2021-04-22/pdf/2021-08303.pdf>