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IMPORTANT LEGAL BULLETIN FOR USAGE AND DELIVERY OF NEW NOTICE TO VACATE

As of November 2015, it appears that the Texas Apartment Association's ("TAA") 2016 Notice(s) may be available for usage. While we strongly encourage and recommend using the new TAA Notice to Vacate, we would like to take this opportunity to bring to your attention the following with regard to usage and delivery of the same:

- I. The legislative amendments to chapter 24.005 of the Texas Property Code do **NOT** go in **effect until January 1, 2016** (Chapter 24.005 of the Texas Property Code, among other things, governs the method and manner for proper delivery of a Notice to Vacate);
- II. We recommend **refraining usage of the 2016 TAA Notice to Vacate until January 1, 2016**; and,
- III. Our recommendations for proper usage and delivery methods for usage of 2016 TAA Notice to Vacate on or after January 1, 2016 ***(Delivery of the Notice to Vacate is NOT proper by simply affixing the Notice to Vacate to the outside of the Resident's main entry door and we discourage usage of this option except in limited circumstances).***

Our goal in issuing this legal bulletin is to provide guidance for the proper usage of the 2016 TAA Notice to Vacate in effort to save properties on potential legal costs, lost rents and time, as a result of having to re-deliver a previously improperly delivered notice to vacate.

I. LEGISLATIVE AMENDMENTS TO CHAPTER 24.005 OF TEXAS PROPERTY CODE FOR PERMISSIBLE METHODS OF NOTICE TO VACATE DELIVERY

Chapter 24.005(f) of the Texas Property Code has been amended. These amendments go into effect on January 1, 2016. The foregoing chapter and subsection, among other things, sets forth the proper method(s) and manner of delivery for a notice to vacate. The high-lighted extract below of 24.005(f) and (f-1) of the Texas Property Code go in effect for a notice to vacate delivered on or after January 1, 2016.

Please note that at the bottom of the above-depicted 2016 TAA Notice to Vacate, it provides for the following delivery options:

The notice was: *(check at least one)*

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> hand delivered to any one of the residents named above; | <input type="checkbox"/> posted on the inside of the dwelling's main entry door (not the screen door); | <input type="checkbox"/> sent by first class mail; |
| <input checked="" type="checkbox"/> hand delivered to any person 16 or older residing in the dwelling; | <input checked="" type="checkbox"/> securely affixed to the outside of the dwelling's main entry door in a sealed envelope, per Texas Property Code Section 24.005; | <input type="checkbox"/> sent by certified mail, return receipt requested; or |
| | | <input type="checkbox"/> sent by registered mail. |

While we strongly encourage and recommend that properties use the new TAA Notice to Vacate anytime on or after January 1, 2016, we recommend that the new TAA Notice to Vacate not be used before then. More particularly, please note the above-depicted and high-lighted option that the notice to vacate be “securely affixed to the outside of the dwelling’s main entry door in a sealed envelope, per Texas Property Code Section 24.005,” is NOT a legally permissible method of delivery until January 1, 2016.

Furthermore, we want to bring to your attention that the above-depicted and high-lighted option that the notice to vacate be “securely affixed to the outside of the dwelling’s main entry door in a sealed envelope, per Texas Property Code Section 24.005,” can be somewhat misleading for someone not familiar with the actual text, including the conditions and steps, required in the Texas Property Code. In this regard, pursuant to Chapter 24.005(f-1) of the Texas Property Code on or after January 1, 2016, a notice to vacate affixed to the outside of the dwelling’s main entry door will be considered properly delivered ONLY if the following conditions and steps are followed in their ENTIRETY:

Basic Applicability: Adding 24.005 (f-1)(f-2) as an alternative to personal delivery or delivery by affixing to the inside of the main entry, you may deliver the Notice to Vacate to the Resident by Affixing it to the outside of the main entry door if the following apply:

1. **No mailbox AND the Leased Premises has keyless deadbolt, alarm, dangerous animal; OR**
2. **“Landlord reasonably believes that harm to any person would result if Notice to Vacate is personally delivered or affixed to inside of main entry door.**

If either of the foregoing are applicable... you **MUST** do the following for the **Notice to Vacate to be considered delivered on the day it is affixed to the outside of the main entry door of the Leased Premises:**

- (a) Notice to Vacate must be placed in **sealed envelope**;
 - (b) Sealed Envelope with Notice to Vacate enclosed must be **securely affixed** to the **outside of the main entry door**;
 - (c) **Envelope MUST** contain the following on the outside:
 - i. **Name** of Resident(s);
 - ii. **Address** of Resident(s); and,
 - iii. in **ALL CAPS** it must state **“IMPORTANT DOCUMENTS”**;
- AND**
- (d) You must ALSO deposit a copy of the Notice to Vacate in the mail as follows:
 - i. **On the same day before 5:00 p.m.**; and,
 - ii. **location of deposit in the mail** must be in the **same county as the Leased Premises**

II. RECOMMENDATIONS FOR USAGE OF NOTICE TO VACATE ON OR AFTER JANUARY 1, 2016

With regard to general policy for delivery of a notice to vacate on or after January 1, 2016, we strongly recommend that property staff be discouraged from usage of the delivery method under Chapter 24.005(f-1) of the Texas Property Code, due to the numerous required conditions and technical steps. Alternatively, should property staff be permitted usage of the delivery method under Chapter 24.005(f-1) of the Texas Property Code, we recommend that it be done only in strict adherence with the foregoing conditions and steps and under a supervisor's approval and guidance.

In sum, we strongly recommend that property staff be restricted to the following delivery methods for a notice to vacate:

- Hand-delivery to a Resident (or occupant of the Leased Premises who is 16 years of age or older);
- Affixing or posting the Notice to Vacate to the **INSIDE** of the Main Entry Door;
- Sending the Notice to Vacate to the Resident by First Class Mail; **AND/OR**,
- Send the Notice to Vacate to the Resident by Certified Mail, Return Receipt Requested.

We would like to commend the Texas Apartment Association and its staff for assisting, promoting and leading this industry. We certainly hope that you have found this legal bulletin to be helpful. Please do not hesitate to contact the undersigned law firm should you have any questions or concerns regarding this legal bulletin.

Sincerely,

THE CWEREN LAW FIRM



Scott H. Fournier
Associate Attorney

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