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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 <u>refraining usage of the 2016 TAA Notice to Vacate until</u> <u>January 1, 2016</u>; 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.

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> (f) Except as provided by Subsection (f-1), the [The] notice to vacate shall be given in person or by mail at the premises in question. Notice in person may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises and affixing the notice to the inside of the main entry door. Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question. [If the dwelling has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to leave the notice to vacate on the inside of the main entry door, the landlord may securely affix the notice on the outside of the main entry door.] (f-1) As an alternative to the procedures of Subsection (f), a landlord may deliver the notice to vacate by securely affixing to the outside of the main entry door a sealed envelope that contains the notice and on which is written the tenant's name, address, and in all capital letters, the words "IMPORTANT DOCUMENT" or substantially similar language and, not later than 5 p.m. of the same day, depositing in the mail in the same county in which the premises in question is located a copy of the notice to the tenant (1) the premises has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to affix the notice to vacate to the inside of the main entry door; or (2) the landlord reasonably believes that harm to any person would result from personal delivery to the tenant or a person residing at the premises or from personal delivery to the premises

> by affixing the notice to the inside of the main entry door. (f-2) Notice to vacate under Subsection (f-1) is considered delivered on the date the envelope is affixed to the outside of the door and is deposited in the mail, regardless of the date the notice

NOTICE TO VACATE FOR NON-DELINQUENCY BREACH OF LEASE

#### REFRAIN USAGE OF 2016 TAA NOTICE TO VACATE UNTIL JANUARY 1, II. 2016

For your review, please find depicted below a blank 2016 TAA Notice to Vacate.

(Names of all residents) (Street address and dwelling unit number, if applicable) (City, State, Zip) Re: Notice to vacate for non-rent breach of lease TAA Lease Contract dated between residents named above and You have violated your lease contract as noted below: Lease Paragraph or Rule Number: Name of resident, occupant or guest in violation (if known): Nature of violation (specific facts): This was a substantial breach of your TAA Lease Contract. We are therefore exercising our right under the lease to terminate your rights of occupancy and possession, effective immediately. You are still liable for rent and other charges you may owe under the lease. If you have not already moved out, demand for possession is hereby made and you are hereby given notice to veacte the premises on or before midnight, which is at least one day from the delivery of this notice as noted below (four days if the notice was mailed). Failure to move out by then will result in an eviction suit being filed and a hearing held before the Justice of the Peace. Delay or postponement of such action does not waive our rights. Date notice was given by the method checked below Signature of owner's representative The notice was: (check at least one) □ posted on the inside of the dwelling's main entry door (not the screen door); ⊠ securely affixed to the outside of the dwelling's main entry door in a sealed envelope, per Texas Property Code Section 24,005; sent by first class mail;
 sent by certified mail,
 return receipt requested
 sent by registered mail. hand delivered to any one of the

hand delivered to any person 16 or older residing in the dwelling;

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)				
<ul> <li>hand delivered to any one of the residents named above;</li> <li>hand delivered to any person 16 or older residing in the dwelling;</li> </ul>	□ ⊠	posted on the inside of the dwelling's main entry door (not the screen door); securely affixed to the outside of the dwelling's main entry door in a sealed envelope, per Texas Property Code Section 24.005;	0	sent by first class mail; sent by certified mail, return receipt requested; or 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:

- No mailbox <u>AND</u> the Leased Premises has keyless deadbolt, alarm, dangerous animal; OR
- "Landlord reasonably believes that <u>har'm to any person</u> 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 <u>MUST</u> do the following for the <u>Notice to Vacate</u> 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 <u>sealed envelope</u>;
- (b) Sealed Envelope with Notice to Vacate enclosed must be <u>securely affixed</u> to the <u>outside of the main entry door;</u>
- (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. <u>location of deposit in the mail</u> must be in the <u>same county as the Leased</u>

    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

**DISCLAIMER:** The foregoing is intended for general informational purposes only and is not intended as legal advice. The information contained herein should not be considered comprehensive and exhaustive. We make no express or implied warranty as to the material's accuracy, reliability, completeness, timeliness or appropriateness for a particular purpose, including applicability to your jurisdiction or circumstances. We assume no liability whatsoever for any direct, indirect or consequential damages resulting from your reliance on this material; you do so at your own risk. As with any matter, always seek the advice of an experience attorney.