



HOW TO START AN EVICTION

Information on starting the eviction process

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The most common type of eviction is eviction for nonpayment of rent, but there are other types. If your tenant has a lease and breaks the lease agreement (or stays beyond the lease), you can evict them. If your tenant has month-to-month tenancy (also called “tenancy at will”), you can do a “no-fault eviction.” This means you don’t need a specific reason to evict. Finally, you can also evict if the tenant is doing something illegal in their apartment.

BEFORE CONSIDERING AN EVICTION:

When you file an eviction, many tenants will use the opportunity to bring up things they feel you did wrong as a landlord. When a tenant brings up these things, it can slow or stop the eviction. It’s a good idea to make sure you’ve treated the tenant properly and followed all laws before proceeding with an eviction.

First, if you took a security deposit, make sure you used the correct paperwork and documents and followed all the laws. If a tenant challenges you on a security deposit, you can usually return the security deposit, and that will resolve any action.

Second, make sure the apartment follows all sanitary code regulations.

Third, check there are no issues with the tenant’s utilities. These could be “cross-metering” (when one tenant is getting billed for the utilities in another apartment). It’s also a problem if you didn’t make a written agreement about paying for utilities.



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www.vlpnet.org/landlord



This guide is purely informational. It is not legal advice. Contact a lawyer for legal guidance.

Fourth, if the tenant complained about the apartment's conditions within the previous 6 months, it may be hard for you to evict them because the courts will assume (unless you prove otherwise) that you are retaliating against the tenant.

You might also consider alternatives to eviction. One option is 'cash for keys.' In 'cash for keys,' you pay the tenant money to leave voluntarily. Although it might seem wrong to pay a bad tenant, evictions can be expensive, so you might save money by paying your tenants to leave rather than evicting them formally.

NOTICES TO QUIT:

Once you decide to evict, the first step is giving the tenant a notice to quit. There are three kinds of notices to quit: 7-day, 14-day, and 30-day. These numbers indicate how many days of warning the tenant has before you can begin the formal eviction process.

WHEN SHOULD YOU USE WHICH LENGTH?

First, if your tenant has a lease, you should follow what the lease agreement says. As a minimum, a lease agreement should give the tenant 14-days for nonpayment and 7-days for other violations, like damaging the property.

7-day: 7-day notices can be used in two cases: If the tenant is doing something illegal (such as possessing an illegal weapon) or if a tenant at will who is paying rent weekly or daily breaks part of a lease agreement, for instance by damaging the apartment.

14-day: 14-day notices are what you usually use for nonpayment of rent, both for tenants with leases and month-to-month tenants.

30-day: There are two cases where you should use a 30-day notice. First, the 2020 CARES Act requires you to give a 30-day notice to quit for properties that are involved with the Federal Government. Usually, these are properties with Fannie Mae or Freddie Mac mortgages. (Actually, the requirement is for 30 days or one rental period, whichever is longer. So, if you want the notice to end on August 1st, you will have to notify your tenant by June 30th. Be careful of February; if you want the notice to end on March 1st, you must notify your tenant by January 28th, not January 31st)

Second, if you have a month-to-month tenant that you are evicting for any reason other than nonpayment, you need to use a 30-day notice.

If you are unsure of whether you need to give a 30-day notice, the safest option is to use one anyway.

WHAT SHOULD A NOTICE TO QUIT INCLUDE?

When writing a notice to quit, make sure to include every reason for eviction. Only items listed in the notice to quit can be discussed before a judge at the court.



Starting from April 2023, a government-made form must be included with every notice to quit for nonpayment, and should be included with every notice to quit where you will potentially seek back rent, which can be downloaded at <https://www.mass.gov/info-details/notice-to-quit-accompanying-form>. You must also attach documentation of any agreements for the tenant to repay the rent owed.

HOW DO YOU DELIVER A NOTICE TO QUIT?

You must deliver a notice to quit in a formal way so you can prove the tenant received it. This is called "serving" the notice. Although you can serve the notice yourself, the best idea is to hire a constable, which costs about \$50. Every county in Massachusetts has constables. You can use this website to find a constable in your town or city: <https://constables-mbca.org/find-a-constable-ma.php>.

After hiring the constable and providing them with the notice to quit, they will deliver it to the tenant in person. After the delivery, the constable will provide you with an "affidavit of service," which confirms that the notice was delivered. It's important to keep this document as proof that the tenant received the notice.

AFTER SERVING THE NOTICE:

Start counting the days after the notice to quit gets served. Be careful: The day you or the constable served the notice doesn't count. For example, if the constable serves a 14-day notice on November 2nd, the rental agreement will officially end on November 17th.

During this period, the tenant has a right to pay the rent they owe. If they pay and you are evicting for nonpayment, you cannot continue evicting. However, if there is another reason for the eviction (like damaging the property), you can continue evicting even if the tenant pays. Once the notice to quit ends, you can begin the formal eviction process.