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Making legal matters easy and economical for your business

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### Getting Started on a Commercial Eviction: The 3-Day Notice

This article gives a brief summary of the 3-day notice, which is how you start an eviction (an unlawful detainer lawsuit). Once the tenant defaults on the lease (usually by not paying rent) the landlord cranks up the machinery of eviction by serving a 3-day notice.

**Contents of the 3-Day Notice.** You start an eviction by serving a 3-day notice on the tenant. This gives the tenant 3 days to pay the rent, and if he doesn't, you file a complaint for unlawful detainer.

In your 3-day notice for rent, you may demand only those amounts that the lease defines as "rent" or "additional rent." Check the boilerplate of your lease – frequently you'll find a section that defines as rent all money due under the lease. In that case, you likely can claim in the 3-day notice all money due from the tenant.

If your lease does not classify all money due as rent, or if you're not sure, get help from a lawyer. You might need to serve two separate 3-day notices on the tenant, the first for base rent and the second for other amounts due. This gets tricky.

California commercial landlords have a choice of two types of 3-day notice for non-payment of rent: one that demands an exact amount of rent, and the other that demands an estimate of rent. 3-day notices that estimate rent are useful in situations in which it's difficult to determine the exact amount of delinquent rent, e.g. where the tenant pays percentage rent.

- The benefit of using an exact-amount notice is that you can file the unlawful detainer complaint if the tenant fails to pay the exact amount within the 3 days. The downside of an exact-amount notice is that if you overstate the amount, your eviction will fail.
- The benefit of using an estimated-amount notice is that you can make a minor mistake in the calculation of rent due. The downside is that the tenant can make its own reasonable estimate of rent due, and by paying that amount within the 3 days, the tenant can avoid eviction (by making up the difference after judgment in the eviction case). Worse, if the tenant's payment equals or exceeds the amount of rent actually due, the tenant will win the eviction action and you'll pay the tenant's legal fees. I prefer that you use an exact-amount notice whenever possible.

**Serving the 3-Day Notice.** Once you've prepared the 3-day notice, you must serve it on the tenant. Many landlords serve their own notices to save money. I prefer that landlords use a registered process server to be sure that service is done right. Defects in service are deadly to an unlawful detainer. You can serve 3-day notices in a few ways, ranging from personal delivery on the tenant (best) to "nail and mail" (worst). If the lease requires a particular form of service, make service that way. Once you've served the 3-day notice, complete a form Proof of Service as evidence.

**Tenant's Response to the 3-Day Notice.** On receipt of a 3-day notice, many tenants will approach you to negotiate a payment plan, and frequently they offer a partial payment of rent. Should you accept the partial payment? No, if you really want to evict the tenant. If you don't want to evict, consider accepting the money, but only if your 3-day notice contains a non-waiver of rights to evict despite acceptance of the partial payment.

When in doubt, don't take the money; don't negotiate; don't play around with deadbeats. Cut your losses and go forward ASAP with the eviction. Only consider a deal if the space is difficult to re-rent and the tenant has a good chance of recovering financially. If you cut a deal, have a lawyer put it in writing.

**Tenant's Cure of the 3-Day Notice.** A tenant cures the 3-day notice by paying the rent owed within the 3 days. In that case, you can't evict the tenant until his next screw-up. Nor can you reject the tenant's delivery of full payment within the 3 day window; but you may reject it after the 3-days.

**Get a Lawyer.** Once the 3-days have passed without tenant's full cure, it's time to file the complaint in unlawful detainer. It's best to have a lawyer throughout the process, but definitely you need one starting here. In the long run, a good lawyer saves you time and money.

I hope this article is useful to you. As always, I only glossed over the outlines of the subject. Call me if you need to talk more.

## Ideas:

From an article about Frank Sinatra:

It was as if he removed all obstacles separating the song from the listener. He did not so much express himself as expose, with objectivity and an almost oppressive clarity, the full measure of what the song had in it. Once he had sung a song—"Begin the Beguine" or "Autumn in New York" or "The Song Is You" or "A Foggy Day" or "Violets for Your Furs"—it stayed sung, in just his way, with every breath and rhythmic accent and knowing slur and catch in the throat permanently attached to it.

*Matt's comment:* When Sinatra sings, it's not about him, it's about the song. Compare with most singers today, who express themselves through the song (witness modern renditions of the national anthem).

