

BEFORE YOU FILE FOR EVICTION

BE AWARE OF THE PITFALLS HINDERING TENANT EVICTION

1. Does your case involve a mobile home owned by the tenant situated on a lot which you own and rent to the tenant? If NO, then please go on to number 2, below. If YES, then please answer the following:

- a. Is the mobile home at least 8' X 35' in size? YES NO
- b. Do you offer 10 or more lots for rent in your park? YES NO

If your answer to either a or b is NO, then please go on to number 2, below. If your answer to both a and b is YES, then please answer the following:

- c. Are you attempting to evict the mobile home owner for any reason other than nonpayment of rent? YES NO (If your answer to this question is YES, you are strongly encouraged to seek the advice of an attorney before proceeding.)
- d. If this is an eviction for nonpayment of lot rent, have you furnished the necessary FIVE-DAY notice by BOTH posting and certified mail? YES NO
- e. If this is not an eviction for nonpayment of lot rent, does your situation fit under one of the specific grounds stated in Sec.723.061(1), AND have you provided any necessary notice in the manner required by the statute? YES NO

IF YOUR ANSWERS TO QUESTIONS 1 a and b WERE YES, THEN YOUR CASE FALLS UNDER CHAPTER 723. ONCE YOU HAVE ANSWERED c, d, and e, ABOVE, PLEASE SKIP DOWN TO PARAGRAPH 6, BELOW WHICH HAS SOME ADDITIONAL INFORMATION FOR YOU.**

- 2. Is the purpose of the lease commercial (business) or residential (home) ? (Check one.)
- 3. If the lease is residential, does it involve either Public Housing or Section 8 housing? YES NO (If your answer to this question is YES, you are strongly encouraged to seek the advice of an attorney before proceeding.) If your answer to this question is YES, have you complied with all special requirements (which may include special notice requirements, “good cause,” etc.) of state and federal law, in addition to the requirements of Chapter 83, Florida Statutes? YES NO
- 4. Are you in the process of selling the leased premises to the “tenant”? YES NO (If your answer is YES, your case is probably not a landlord-tenant case. You should consult with an attorney before proceeding.)
- 5. Is the “tenant” a family member or a former boyfriend or girlfriend, or any other person who has never been obligated to pay rent to you? YES NO (If your answer is YES, your case is probably not a landlord-tenant case. You should consult with an attorney before proceeding.)
- 6. If you are evicting tenant(s) for failure to pay rent, please answer YES or NO to each of the following in the blanks provided to the left of the question:
 - _____ a. Prior to filing your complaint for eviction, have you given the tenant the necessary three-day notice to pay rent or vacate the premises? (Three days excludes the date of service, AND excludes Saturday, Sunday, and all legal holidays.)

BEFORE YOU FILE FOR EVICTION

- _____ b. Have you demanded RENT only (not late fees or interest charges or other monies in excess of RENT) in your three-day notice?
 - _____ c. Have you included your name, address, and phone number? (Don't give your address as a P.O. Box, or you will be required to give an additional five days response time for mailing.)
 - _____ d. Have you delivered a copy of the three-day notice to the tenant by hand delivery, mail, or, if the tenant is absent from the premises, by leaving a copy thereof at the residence? (If you mail the notice, you must give an additional five days response time in addition to the three days.)
 - _____ e. Does your lease agreement call for any additional notice period?
 - _____ f. Have you accepted any partial payment of rent since furnishing the three-day notice? (If you have, then you cannot proceed with eviction.)
7. If you intend to evict the tenant by terminating an ongoing (period to period) tenancy you must give a proper notice of the termination. A tenancy without a specific duration may be terminated by either party giving written notice as follows:
- a. When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period;
 - b. When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period;
 - c. When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period;
 - d. When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

Whether a tenancy is from month to month, or any other period to period, is a legal question. It is determined by the agreement between the parties. If the tenant is in possession but there has never been any agreement between the parties to pay rent, then generally it is not a landlord-tenant case. (You should consult with an attorney before proceeding.)

IF YOUR THREE-DAY NOTICE IS DEFECTIVE, OR IF YOUR NOTICE OF TERMINATION IS DEFECTIVE, YOUR CASE IS SUBJECT TO IMMEDIATE DISMISSAL, AND, IF DISMISSED, YOU MAY NOT RECOVER THE COURT COSTS YOU HAVE PAID.

8. In order to go forward with your case, the tenant must be served with process. This can be done by Sheriff or process server. For actions for possession only, and not involving the removal of a mobile home from a rented lot under Chapter 723, the tenant may be served by posting. If you intend to allow posting of service of process, you must furnish a pre-addressed, stamped envelope to the clerk who will mail a copy of the summons and complaint to the tenant in addition to the copy which is posted by the Sheriff or process server. Service is effective on the date of posting or mailing, **WHICHEVER OCCURS LATER. *Service by posting without mailing is not effective.*** Service by posting is not effective FOR ANY PURPOSE other than removal of the tenant. This means you cannot recover back rent or damages if you have served by posting, and you cannot even recover

BEFORE YOU FILE FOR EVICTION

your court costs. **SERVICE BY POSTING IS NOT AVAILABLE IN ACTIONS FOR REMOVAL OF A MOBILE HOME UNDER CHAPTER 723.**

THIS INFORMATION IS ONLY INTENDED AS A GUIDE TO ADDRESS SOME OF THE COMMON PROBLEMS FACING LANDLORDS. IT IS NOT A SUBSTITUTE FOR COMPETENT LEGAL ADVICE FROM A LAWYER OF YOUR OWN CHOOSING. IT IS ALSO SUBJECT TO CHANGE IN THE LAWS WHICH HAPPENS WITHOUT NOTICE.

****Please request from the Clerk a “Complaint by Landlord to Recover Possession – Tenant’s Default in Payment of Mobile Home Park Lot Rent”.**

Under penalties of perjury, I swear that I have read the foregoing and I have answered each of the questions truthfully and completely.

DATED this _____ day of _____, 20__.

Plaintiff

(print name)

Plaintiff

(print name)