

Nevada Landlord-Tenant Law

Introduction

Nevada Revised Statutes (NRS) Chapters 40 and 118A contain the provisions of Nevada law that cover residential landlord-tenant relationships.¹ Certain provisions of NRS Chapter 118 and federal law also apply, as indicated below. This booklet follows the chronological order of a tenancy, from moving in to moving out. It provides practical information based on the collective experience of Nevada Legal Services advocates.

Nevada Legal Services helps thousands of tenants each year. We provide free legal assistance to low income Nevadans. Our contact information is contained on the last page.

This booklet assumes that you are a tenant of a residential dwelling in Nevada. NRS Chapter 40 contains eviction procedure and applies to all landlord-tenant relationships. Creating a landlord-tenant relationship usually means providing something of value to the owner of property in exchange for the exclusive use of that property. The rights under Chapter 40 also apply to a tenant and subtenant relationship. NRS 40.270.

NRS Chapter 118A does NOT apply to all landlord-tenant relationships. For example, Chapter 118A does not apply if you own a manufactured home in a manufactured home park, if you live in the dwelling because you work for your landlord, or if you have lived in a hotel or motel for less than thirty days and you have NOT clearly shown you intend to live there indefinitely. NRS 118A.180.

This booklet also assumes that NRS Chapter 118A applies to you. If you have any question, please review NRS 118A.180 or contact Nevada Legal Services. If you have ANY question regarding the information in this booklet, please contact Nevada Legal Services. If you are eligible for our services, we will answer your question. If not, we can provide a referral to another attorney who can.

¹ NRS Chapter 648 covers process servers.

Part One-Moving In

I. Lease Requirements

Nevada law does not require a written lease with your landlord, except if you rent a dwelling for more than 1 year. NRS 111.210 and 118A.160. Many landlords use the same form over many years. Sometimes, these forms contain illegal provisions. You should read your entire lease before signing it. If you disagree with any provision, you should ask your landlord to change or cancel it. You cancel the provision by crossing out the disputed sentences and putting your initials, along with the landlord's initials, beside the deleted portion.

The following information will help you figure out if your lease contains anything illegal. If your lease contains an illegal provision, NRS 118A.200(5) and 118A.220(1)(a) void or cancel it by operation of law. This means that even though you signed the lease, the law would not allow the landlord to enforce it against you. At the same time, even though your lease has an illegal provision, it does not mean the entire lease is void. Leases usually have a savings clause that allows enforcement of the lease despite an unenforceable or illegal provision.

Pay attention to the duration of the lease, when it begins and ends, the amount charged for rent and late fees, and the amount you must deposit as security. Always get a copy of any lease that you sign.

If a landlord offers a written lease, NRS 118A.200 requires:

1. The lease must be signed by you and landlord or manager.
2. The landlord must provide a free copy of the lease to you.
3. The lease must contain certain terms, such as:
 - (a) Duration of the agreement (six months/twelve months/etc);
 - (b) Amount of rent and the manner and time of its payment;
 - (c) Occupancy by children or pets;
 - (d) Services included with the dwelling;
 - (e) Fees which are required and the purposes of the fee;
 - (f) Deposits which are required and the conditions for their refund;

- (g) Charges which may be required for late or partial payment of rent or for return of any dishonored check;
- (h) Inspection rights of the landlord;
- (i) A listing of persons or numbers of persons who are to occupy the dwelling;
- (j) Respective responsibilities of you and the landlord as to the payment of utility charges;
- (k) A signed record of the inventory and condition of the premises under your exclusive custody and control;
- (l) A summary of the provisions of NRS 202.470 (criminal nuisance);
- (m) Information regarding the procedure by which you may report to the appropriate authorities: (1) A nuisance or (2) A violation of a building, safety or health code or regulation;
- (n) Information regarding your right to display the U.S. flag, as set forth in NRS 118A.325.

Any written lease that violates the previous terms is void. NRS 118A.200(6).

Presumptions when lease is silent

If your written or verbal lease does NOT address the following matters, NRS 118A.200(5) presumes that:

- (1) There are no restrictions on occupancy by children or pets.
- (2) Maintenance and waste removal services are provided without charge to you.
- (3) No charges to the tenant for partial or late payments of rent or for dishonored checks.
- (4) Other than normal wear, the premises will be returned in the same condition as when the tenancy began.

This means that if your verbal or written lease does not contain any provision regarding late fees, the landlord cannot charge anything for the late payment of rent.

Prohibited lease terms

NRS 118A.220(1) prohibits any lease that requires you to:

- (1) Give up any right under NRS Chapter 118A;
- (2) Confess judgment (admit in a formal court document) for any claim arising out of lease or give up any future legal claim against the landlord based on the landlord's actions or omissions;
- (3) Pay the landlord's attorney's fees, but the prevailing party may claim attorney's fees;
- (4) Provide notice longer than notice the landlord must supply to you.

Any lease provision that forces you to give up rights under Nevada NRS Chapter 118A is void and you can sue the landlord for any actual damage caused by the illegal provision. NRS 118A.220(2).

Can a landlord change lease terms?

NRS 118A.320 allows the landlord to change some lease terms, but not if the change affects (1) how much you pay for rent, utilities, or other charges, or (2) the duration of the lease. The change must also

- (1) Apply to all tenants, and
- (2) Promote the convenience, safety or welfare of the landlord or tenants, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally.

For any change in lease terms that does not affect payments or duration, the landlord must provide thirty days written notice. If you agree in writing, the change can happen immediately or anytime less than thirty days. NRS 118A.320(2)

II. Security Deposits

NRS 118A.240, 118A.242, and 118A.244, govern security deposits in Nevada.

What is a security deposit?

A security deposit is an amount of money you provide to compensate the landlord for any unpaid rent or late fees, cleaning costs, and the cost of repairing damages, other than ordinary wear and tear. NRS 118A.240. A security deposit compensates the landlord for any of these costs incurred *after* you move out. “Security” is NOT a surety bond.

How much can a landlord require for a security deposit?

A landlord cannot require a deposit and nonrefundable cleaning fee that exceeds three months’ rent. NRS 118A.240 and 118A.242. If your landlord requires you to pay the last month’s rent, then the security deposit and nonrefundable cleaning fee cannot exceed two months’ rent. During the term of your lease, a landlord cannot require you to deposit more for security. NRS 118A.320. If a new owner takes over, the new owner cannot require you to deposit more for security for thirty days or the duration of your lease, whichever is longer. NRS 118A.244(3)(b).

A security deposit cannot be nonrefundable, but the landlord can charge a nonrefundable cleaning fee. NRS 118A.242.

What is a surety bond?

A security deposit can also be a surety bond. Although Nevada law allows a surety bond instead of a security deposit, your landlord cannot require the bond and you cannot force the landlord to accept it. NRS 118A.242(2) and (3). Also, your landlord should not be able to evict you if you do not purchase a surety bond. This may be viewed as retaliation under NRS 118A.510(1)(f).

If you and the landlord agree to have surety bond instead of a deposit, you will pay an up-front fee for the bond that will cover the legal deductions normally paid by your security deposit. If you disagree with the charges, you must notify the surety bond company in writing. The surety bond can sue you for damages if the bond does not cover the costs allowable under NRS 118A.242. If the surety

bond pays the landlord for damages that did not occur or are not allowable under NRS 118A.242, you may have to sue both the surety bond company AND the landlord. Because of this burden, we do not recommend that any tenant pay for a surety bond.

What can a landlord legally deduct from my security deposit?

NRS 118A.242 allows the landlord to claim from your security deposit or surety bond the cost to repair any damage to the dwelling, other than ordinary wear and tear, cleaning fees, and unpaid rent and late fees. These costs must have been caused by you. These costs must also be reasonable and lawful. The landlord can also claim any amount owed under your lease, but cannot deduct this amount from your security deposit or the surety bond. NRS 118A.242. The landlord has to return your security deposit within thirty days of you vacating the dwelling. If the landlord deducts any amount from your deposit, the landlord has to provide a written accounting to you within those thirty days.

How can I get my deposit back?

If the landlord fails to return your deposit and does not provide a written accounting within thirty days of moving, you can sue the landlord for up to two times the amount of your security deposit: your original deposit, plus statutory damages in an amount up to your original deposit. In deciding whether to award statutory damages, the judge can consider: (a) Whether the landlord acted in good faith; (b) The course of conduct between the landlord and you; and (c) The degree of harm to you caused by the landlord's conduct. NRS 118A.242(4). Keep in mind the landlord can countersue you for any amount due under your lease.

What can I do if I disagree with the landlord's deductions?

If you disagree with any deductions the landlord has made, you can sue the landlord. If the landlord has made any deductions to your security deposit, you have three arguments: (1) the damage did not occur; (2) the deductions were not warranted under the law; and (3) the costs were unreasonable, if warranted.

For example, the landlord deducted the cost to repaint your dwelling based on many chips and scuffs on the walls. You deny this damage and your argument

against this charge would be the damage did not occur (argument 1). If you lived in the dwelling for 10 years, you could also argue that the damage was ordinary wear and tear and thus, the deduction would not be warranted under NRS 118A.242 (argument 2). If the landlord charged \$10,000 to repaint, then you could also argue the costs were unreasonable (argument 3).

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Part 2-Problems After Moving In

I. Problems with your dwelling

Basic requirements

Nevada law requires a landlord to maintain a habitable dwelling unit. “Habitable” generally means livable or capable of allowing an average person to use and enjoy the dwelling and live free of defects affecting health or safety.

Under NRS 118A.290, your dwelling must comply with health and housing code, and have:

- (1) hot and cold running water;
- (2) floors and walls that provide adequate weather protection and do not leak;
- (3) a working toilet;
- (4) doors and windows that open, close, and fit properly;
- (5) electrical outlets and wiring that operate safely;
- (6) building and grounds free of garbage, rodents, insects, and vermin;
- (7) adequate heat;
- (8) other services, like ventilation, air conditioning, elevators, stoves, refrigerators, if supplied by the landlord when you moved in or required in your lease. In addition, the landlord may agree to provide appliances or furniture, and these items must also work properly.

Air conditioning, if not provided in your lease or in good working order when you move in, is NOT required under NRS 118A.290. Your lease may also require you to make repairs and perform maintenance tasks, so check your lease before complaining about any habitability problem or lease violation.

NRS 118A.350, 118A.355, 118A.360, and 118A.380 contain your remedies if the landlord has failed to maintain a habitable dwelling. These laws have different requirements and a diagram follows this section.

NRS 118A.350 covers lease violations. NRS 118A.355 covers habitability violations (NRS 118A.290). NRS 118A.360 covers lease and habitability violations. NRS 118A.380 covers essential items or services *only*.

Habitability and Lease Violations

NRS 118A.350, 118A.355 and 118A.360 contain remedies for habitability and lease violations. NRS 118A.350 covers lease violations and your remedies if the landlord violates your lease. You cannot withhold rent under NRS 118A.350 and this is the only difference between the remedies for lease violations under NRS 118A.350 and habitability violations under NRS 118A.355.

Remedies for essential items or services violations are contained in NRS 118A.380, and discussed in the Essential Items or Services section below. For a habitability violation, the following procedure must be used.

You must provide written notice to landlord

If you have a habitability problem with your dwelling, Nevada law requires you to provide written notice of the problem to the landlord or manager. Verbal notice or work orders are generally insufficient.

To pursue your rights under Nevada law, you should have evidence that you informed the landlord of a particular problem. The written notice is evidence. Also, you cannot seek these remedies if you or a member of your household caused the problem.

You must allow time for landlord to fix problem

Nevada law provides time for a landlord to fix the habitability problem. For problems other than essential services, you must give the landlord 14 days to fix the problem. If you want to repair and deduct and have an emergency, you can require the landlord to fix the problem sooner than 14 days, but no sooner than 48 hours after issuing the notice.

Remedies if the landlord does not fix the problem

If the landlord fails to fix or make a reasonable attempt to fix the problem, you can sue for damages, terminate your rental agreement and move out, withhold rent that becomes due, and repair and deduct. You cannot withhold rent if you owe rent to the landlord. Also, if you withhold rent, you must deposit your rent into an escrow account with the justice court. Unless you deposit your rent with the court, you will not have a defense if the landlord tries to evict.

Repair and deduct

You can also repair the problem yourself and deduct the cost from next month's rent. You can only repair the problem yourself if it will not cost more than one month's rent, and you can only repair and deduct a total of one month's rent every twelve months. Also, your lease may specify a person or company who must perform the work needed to fix the problem. Check your lease before you call anyone to repair the problem.

Condemnation

You can also contact your local building or health inspector if the problem is serious. The inspector could order the landlord to fix the problem or face condemnation. If the inspector condemns your dwelling, you will be forced to leave.

Substitutes for written notice

If you are suing the landlord for money damages under NRS 118A.350 and 118A.355, you do not need to issue a written notice if the landlord admits in court of knowing about the problem. This rarely happens.

If you want to withhold rent under NRS 118A.355, you do not need to issue written notice if the landlord has already received notice from code enforcement or some other government agency. Still, you must deposit your rent into an escrow account with the justice court.

Yet, we still strongly advise you to send your own notice, keep a copy of the notice, and wait fourteen days for the landlord to fix the problem. Always keep a copy of the notice that you give your landlord. You will need it as proof that you have complied with Nevada law if you decide to sue your landlord in court for damages or as a defense if your landlord should try to evict you.

Landlord fixes the problem

If your landlord has completed the repairs, you must immediately pay the landlord any rent that you have lawfully withheld.

Retaliation

If you withhold rent, the landlord could try to evict you using a five day pay rent or quit notice. This would violate Nevada law. See Part 3-Retaliation.

Essential Items or Services

Under NRS 118A.380, “essential items or services” are heat, air-conditioning, hot and cold running water, electricity, gas, a working door lock, or another essential item or service. Air conditioning is only an essential service if it is required in your lease or the service worked when you moved in. In Southern Nevada, most dwellings have air conditioning. You should always make sure your air conditioner works before moving in.

If you are going to use the remedies for essential services problems under NRS 118A.380, Nevada law prohibits you from also using the habitability remedies of NRS 118A.350 and 118A.360 under the previous section.

Willful or negligent

If the lack of essential services is the result of the landlord’s willful or negligent actions or inaction, then you can pursue your remedies under NRS 118A.380. If the essential services problem is not the result of willful or negligent actions of the landlord, then you must pursue the remedies under the previous section Habitability and Lease Violations.

Written notice and forty-eight hours to fix

The landlord must treat your lack of essential services as an emergency that must be repaired within forty-eight hours. You should first provide written notice to your landlord and request that the repairs be made within forty-eight hours. These forty-eight hours do not include weekends or holidays.

What can I do if the landlord does not fix the problem?

If the landlord does not make the repairs, or does not make a good faith effort to complete the repairs, you can choose to do the following:

- a. Obtain or repair the essential services on your own, like a space heater, and deduct the cost from your next month's rent (you may have to use a person or firm specified in the lease to make these repairs);
- b. Sue your landlord for actual damages, including the reduction in the value of your use of your home;
- c. Withhold any rent that becomes due. You cannot be charged late fees until your landlord has attempted in good faith to repair the essential service. You do NOT need to deposit your rent into escrow with the court. You can choose this option only if rent is current at the time you give your landlord the written notice; or
- d. Obtain comparable substitute housing during the time that your essential service is not working. While you are renting the substitute housing, you do not owe your landlord any rent. If the substitute housing costs more than the rent that you pay to your landlord, you can recover the difference in cost from your landlord.

Substitutes for written notice

If you are suing the landlord for money damages under NRS 118A.380, you do not need to issue written notice if the landlord admits in court of the problems. This rarely happens.

If you want to withhold rent or sue for damages under NRS 118A.380, you do not need to issue written notice if the landlord has already received notice from code enforcement or some other government agency.

In both cases, however, we strongly advise you to send your own notice, keep a copy of the notice, and wait forty-eight hours for the landlord to fix the problem. Always keep a copy of the notice that you give your landlord. You will need it as proof that you have complied with Nevada law if you decide to sue your landlord in court for damages or as a defense if your landlord should try to evict you.

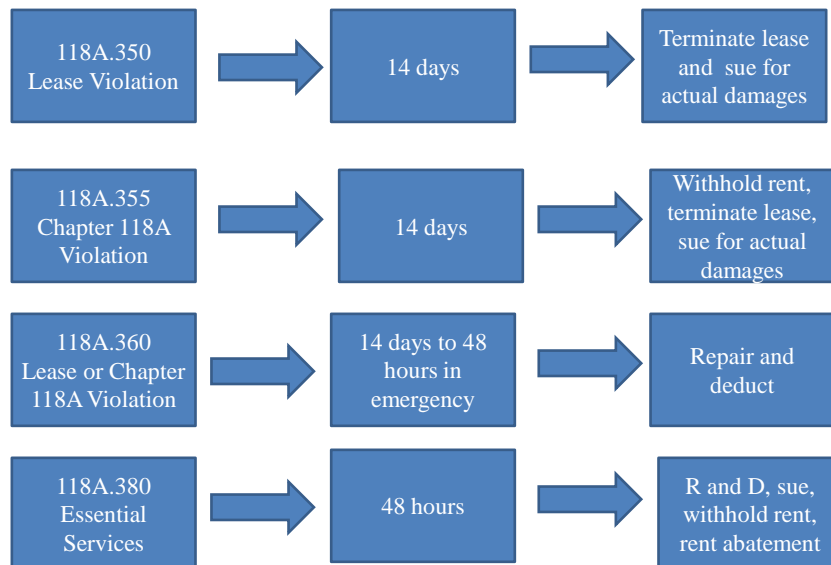
What if the landlord fixes the problem?

If your landlord has completed the repairs or your essential services have been restored, you must immediately pay the landlord any rent that you have lawfully withheld.

What if the landlord tries to evict me?

If you withhold rent, the landlord could try to evict you using a five day pay rent or quit notice. This would violate Nevada law. See Part 3- Retaliation.

Habitability Notices and Remedies



Part 3-Retaliation and the Fair Housing Act

I. Retaliation

NRS 118A.510 protects you from retaliation. Retaliation requires two components: (1) your protected activity and (2) the landlord's reaction.

1. Your protected activity includes:
 - (a) Complaining to the police about criminal conduct;
 - (b) Complaining to the landlord about any violation of NRS Chapter 118A, usually habitability;
 - (c) Complaining about building, housing, or health code violations to an appropriate government agency;
 - (d) Joining a tenant's union or similar organization;
 - (e) Raising the landlord's violation of habitability law in a judicial or administrative proceeding;
 - (f) Refusing to give written consent to a proposed rule of landlord that requires a waiting period (usually thirty days under NRS 118A.320); or
 - (g) Complaining to the landlord, HUD, or other appropriate person or agency regarding the landlord's violation of the federal Fair Housing Act or NRS 118.100; or
 - (h) Being the victim of domestic violence.
2. If you participate in the protected activity or have been the victim of domestic violence, the landlord cannot react by:
 - (a) Threatening to serve or serving an eviction notice, unless the eviction is based on the failure to pay rent, nuisance, or a lease violation,
 - (b) Increasing your rent, or

(c) Decreasing essential services required by NRS Chapter 118A or the lease.

If the landlord has retaliated against you, NRS 118A.510 allows you to sue the landlord for \$2,500 in statutory damages, plus actual damages.

II. The Fair Housing Act

The Fair Housing Act (42 U.S.C. Sections 3601 to 3631) provides protections to you and prevents a landlord from not renting to you, treating you differently while you reside in the dwelling, or evicting you.

Protected classes

A landlord cannot discriminate against you because of your race, color, national origin, religion, sex, familial status (including pregnant women, children under the age of 18 living with parents or legal custodians, and people securing custody of children under the age of 18), and handicap (disability).

Prohibited actions by a landlord

The landlord cannot (1) refuse to rent to you, (2) selectively enforce rules against you, or (3) evict you, based on your protected class. 42 U.S.C. Section 3604.

The Fair Housing Act also prohibits the landlord from steering you to a particular place in the complex to live with other members of a protected class. The landlord also cannot refuse to accommodate your disability. For example, the landlord usually must provide a handicapped parking space if you have a verified physical disability.

Discrimination under Nevada law

NRS Chapter 118 contains Nevada's anti-discrimination laws. These laws mirror the federal Fair Housing Act, except Nevada law includes sexual orientation and gender identity in the protected classes. NRS 118.100.

Part 4-Leaving So Soon?

I. Surrender and Abandonment

Under NRS 118A.480, a landlord does not have to issue any eviction notice if you voluntarily surrender or give up possession, like turning in your keys; or if you abandon the dwelling, like being away from your home for an extended period of time. A landlord usually cannot presume surrender and it must be something that you do or say to the landlord, like turning in your keys. A landlord can only presume abandonment if you have not paid the rent and been away for more than ½ of the rental term, more than fifteen days if you pay by month, and three days if you pay rent by the week. NRS 118A.450.

Can the landlord keep the property I leave behind?

Even though the landlord may be able to presume abandonment and lock you out without notice, the landlord still cannot refuse to allow you to retrieve the property you leave behind. NRS 118A.460. See Part 5(I)-Property Left Behind.

II. Eviction

NRS Chapter 40 contains Nevada's landlord-tenant eviction laws. NRS Chapter 40 contains three eviction procedures: (1) summary eviction under NRS 40.253, (2) expedited housebreaker under NRS 40.414 and 40.416, and (3) the more formal unlawful detainer process under NRS 40.290 through 40.420.

Summary eviction applies except when you own a manufacture home in a manufactured home park or when your dwelling has been sold or foreclosed. Housebreaker applies when you break into a house and begin living there or you rent a house from someone other than the owner or agent. A housebreaker is also subject to summary eviction and the plenary process. The plenary unlawful detainer process applies after losing a housebreaker or summary eviction case, or is the exclusive eviction procedure for the resident of a manufactured home or in a home after transfer of ownership through sale or foreclosure.

The more popular eviction process is summary eviction. This booklet does not cover the plenary eviction process, except with regard to foreclosures or transfer of

ownership below. Generally, service of a seven day pay rent or quit notice or five day unlawful detainer notice signals summary eviction.

Summary Eviction

Summary eviction is an informal process where the tenant must only raise, not prove, a legal defense to the eviction. If the tenant can establish a legal defense, the court must deny the summary eviction. The Nevada Supreme Court has determined that “legal defense” is when you raise a “genuine issue of material fact.” *Anvui, LLC v. Dragon, LLC, 163 P.3d 405 (2007)*. Most legal defenses are set forth below.

You can also raise a legal defense when you question the power of the landlord or court to hear your case. This defense attacks the court’s *jurisdiction* and usually involves notice issues such as the lack of notice, the wrong notice, or the improperly served notice. You should contact Nevada Legal Services or consult with another attorney if you want to raise a jurisdiction defense.

NRS Chapter 40 provides several reasons a landlord can use for eviction. NRS 40.251 allows the landlord to serve a thirty day or seven day no cause eviction notice. NRS 40.2514 allows the landlord to serve a three day nuisance notice. NRS 40.2516 allows the landlord to serve a five day lease violation notice. NRS 40.253 allows the landlord to serve a seven day pay rent or quit notice. We will discuss these notices next. NRS 40.255 allows the new owner of property to serve a sixty day, thirty day or three day notice after foreclosure or sale, but this notice will be discussed in Part 6-Foreclosure and Tenant’s Rights.

How much time do I have?

Nevada Rules of Civil Procedure, and the comparable Justice Court Rules of Civil Procedure, govern notices in Nevada courts. Rule 6 governs the counting of days when a landlord issues an eviction notice.²

² As of September of 2019, Justice Court and District Court have different versions of Rule 6. Justice Court excludes weekends, holidays, and non-judicial days counting 10 days or less. District Court counts these days.

If you have received a seven day pay rent or quit notice, NRS 40.253 allows you until close of business (when court closes) on the seventh day following service of this notice to pay the rent, move, or file an affidavit with the justice court. In Justice Court, you do not count the day you are served, weekends, holidays, and other days the court is closed. Some courts have four day weeks and you do not count the Friday or Monday the court is closed. In District Court, you count every day except the day of service.

You must file by close of business on the 7th day and this usually means you will have until close of business of the 9th day following service of the notice. This does not apply if you are served on a weekend or a holiday. Also, if the last day is a weekend or holiday, you then have until the next day the court is open.

If you have received any other notice ten days or less, you count days beginning the day after receiving notice. You do not count the day you are served, weekends, holidays, and other days the court is closed. Some courts have four day weeks and you do not count the Friday or Monday the court is closed. In District Court, you count every successive day except the day of service.

If your notice is more than ten days, then you do not count the day you are served. You then count every day after being served **INCLUDING** weekends, holidays, and all other days the court is closed. If the last day is a day the court is closed, then you must count the next day the court is open. This is **ALWAYS** the way to count in District Court.

Service of eviction notice

NRS 40.280 contains the legal requirements for serving an eviction notice. If you have received an eviction notice, you probably should not argue insufficient notice without an attorney. However, if you have **NOT** received any eviction notice and constable or sheriff is going to evict you, then you would have a legal defense to the eviction because service was insufficient and the court does not have jurisdiction to enter an eviction order. You must file a motion right away and we suggest contacting Nevada Legal Services or consulting with another attorney to avoid the eviction.

Only a constable or sheriff, registered process server, or an attorney or agent of an attorney can serve eviction notices. Only the constable or sheriff can serve eviction orders.

How do I oppose the eviction?

If you want to contest any eviction, the eviction notice must advise you of the court that has jurisdiction over your case. Southern Nevada has three main justice courts: Las Vegas, Henderson, and North Las Vegas. If you live in Las Vegas or unincorporated Clark County, Las Vegas Justice Court has jurisdiction over your case. You file your affidavit with the clerk of the court of the township where you live.

If you file your affidavit with the clerk of the court and serve your affidavit to the landlord, you are then entitled to a hearing before the judge where you can present any legal defense to the eviction. NRS 40.253. The clerk should tell you what happens next.

You should not be evicted until your hearing and only if the judge finds that you have not raised a legal defense. Then, the judge signs an eviction order. Thus, the affidavit lets the landlord and the court know you are contesting the eviction and requires the court to set a hearing.

No legal defense

Even if you do not have a legal defense to the eviction and just want more time, NRS 40.253 requires the court to hold a hearing. A court cannot legally deny you a hearing if you have filed an affidavit within the five days allowed in the notice.

What happens at the eviction hearing?

At your eviction hearing, tell the judge your side of the story. Your job is to convince the judge that you have a legal defense to the eviction. The Nevada Supreme Court has determined that “legal defense” is when you have a “genuine issue of material fact.” *Anvui, LLC v. GL Dragon, LLC*, 163 P.3d 405 (2007). You also have a legal defense if you establish a jurisdictional error by the court or the landlord.

If the judge finds that you have raised a legal defense, the judge will deny the eviction. If you do not raise a legal defense, the judge will grant the eviction and issue an order. The constable or sheriff must serve the eviction order within twenty-four hours and perform the lockout within thirty-six.

You have the right to ask for a stay of eviction for up to ten days if the judge grants the eviction. NRS 70.010(2). The court will grant a stay if you can show the court compelling reasons why you need it. You may file an appeal of the eviction action if you can show that the judge made an error of law or the facts supporting the eviction were unsupported or arbitrary. You must file your appeal within 10 days of the eviction hearing or within 10 days of the date on the eviction order if you did not have a hearing. To stay in the dwelling, you must file your appeal before the lock out.

Seven Day Pay Rent or Quit Notice

NRS 40.253 and 40.2512 allow the landlord to serve a seven day pay rent or quit notice any time after rent is due. Even if you are just one day late with rent, the landlord can serve this notice. Nevada law does not require any grace period. "Rent" does not include late fees, security deposit, damages or anything other than the periodic rent listed in your lease. Late fees cannot exceed 5% of the periodic rent and cannot be included in the seven day notice.

Legal Defenses

Nevada law provides several defenses to a seven day pay rent or quit notice. The defenses fall into two general categories: (a) I paid the rent or tried to pay the rent; and (b) I have a legal reason for not paying the rent.

(a) I have paid the rent or tried to pay the rent

NRS 40.253 specifically provides that if you paid the rent or tried to pay the rent (called "tender"), then you have a legal defense. To establish this defense, you should provide a receipt or some other evidence that demonstrates you paid or tried to pay the rent. If you have tried to pay the rent, do not spend this money and bring it with you to court.

(b) I have a legal reason for not paying the rent

There are a wide variety of legal reasons for not paying the rent. Many judges are not aware or refuse to recognize these reasons so you should carefully consider whether you want to risk what often happens in an eviction hearing: you are legally correct but the judge evicts you anyway. If you cannot appeal an adverse ruling or the evidence supporting your claim is weak, you may not want to rely on these legal arguments and you should just pay the rent.

Withheld rent under NRS 118A.355 or 118A.380

NRS 118A.355 allows you to withhold rent if (1) your dwelling violates NRS 118A.290 (Nevada's habitability law), (2) you have provided written notice to your landlord, and (3) your landlord has not fixed this problem or attempted to fix the problem within 14 days. See Part 2(I)-Problems with your dwelling.

If the landlord has fixed or attempted to fix the problem, or you are not current with the rent, you cannot withhold rent. Also, NRS 118A.355 requires you to deposit your rent with the court when you file your affidavit. The court will determine when the landlord will get the rent.

NRS 118A.380 is a similar law that allows you to withhold rent. However, NRS 118A.380 deals with essential services and the landlord's willful or negligent failure to supply essential services. See Part 2(I)-Essential Services. With an essential services problem, you only have to wait 48 hours for the landlord to fix or attempt to fix the problem, excluding weekends and holidays. If the landlord fails to fix the problem and fails to make a good faith effort to fix the problem, then you can withhold the rent. You cannot withhold rent if you are not current with the rent, but you do NOT have to deposit the rent into escrow when you file your affidavit.

Damages that subtract from the rent

NRS 118A.490 allows you to offset or subtract from your rent any amount the landlord owes you under your lease, NRS Chapter 118A, or other applicable law. To have a defense to a nonpayment eviction, this offset amount must equal or exceed the rent you owe to the landlord.

For example, a leaky roof has caused \$2,000 in damages to your furniture and clothing. You have not paid this month's rent which is \$1,000 and the landlord has served a seven day pay rent or quit notice. You would have a legal defense to the eviction based on the NRS 118A.490 and the damages you sustained because of the leaky roof.

Another example would be if you failed to pay the rent and the landlord shut off the power to your dwelling. NRS 118A.390 allows you to sue the landlord for \$2,500 in statutory damages, plus actual damages. If your rent is \$2,500 or less, then you would have a defense if the landlord served a seven day pay rent or quit notice.

No Cause Eviction Notice

Nevada law allows a landlord to serve a no cause eviction notice. NRS 40.251. As long as your lease has expired, the landlord can serve a no cause eviction notice and does not have to provide you or the court with any reason for the eviction.

Thirty days or seven days

If you rent by the week, the landlord must serve a seven day notice. If you rent for any longer period of time, the landlord must provide a thirty day notice.

Can I request extra time?

If you received a thirty day notice and are disabled or older than fifty-nine years of age, you can request thirty additional days from your landlord. Notice of the right to request an additional thirty days should be provided in your thirty day eviction notice. You must request this additional thirty days in writing and supply proof that you qualify, i.e., proof of age or disability. You are not entitled to this additional time if you rent by the week.

If the landlord denies your request, you must then file a petition with the justice court. The court will determine whether you can stay and for how long. You should wait until near the end of your thirty day notice because if the court denies your request for a thirty day extension, the court can order your eviction within five days.

If you are not disabled and not over fifty-nine, you can still ask the court for more time to move. You do this by waiting for the landlord to serve a five day unlawful detainer (required after your thirty or seven day notice expires). Then, you must file an affidavit within five business days as described above.

If you are disabled, the Fair Housing Act may require a reasonable amount of time for you to move that *exceeds* the thirty extra days allowed under Nevada law. If the extra time is related to your disability, then your landlord may be violating the Fair Housing Act by not providing the extra time.

What are the defenses to a no cause eviction?

You will not have a legal defense to a no cause eviction notice unless your lease has not expired, or your landlord has discriminated or retaliated against you.

Retaliation

Retaliation is a defense to a no cause eviction notice. See Part 3(I)-Retaliation for what constitutes retaliation under NRS 118A.510. Retaliation generally happens when you complain about conditions in or around your dwelling and instead of fixing these problems, the landlord serves a no cause eviction notice. For example, if you complain to the landlord about habitability problems, or call the police about crime, the landlord cannot retaliate by serving you a no cause eviction notice. If this has happened to you, you would have a legal defense to the no cause eviction. Retaliation also occurs when the landlord tries to evict you based on being the victim of domestic violence.

Discrimination

If your landlord is evicting you because of your race, color, religion, sex, family size, national origin, or disability, then this would violate the Fair Housing Act. Remember that sexual orientation and gender identity or expression are protected classes under Nevada law. Any act of discrimination is a defense to a no cause eviction notice. While some discrimination is easy to spot, other discriminatory actions are not. For example, your landlord cannot evict you for having children. If you have a mental or physical disability, a landlord cannot evict you because you

need a service animal even if the service animal has NO special training. See Part 3(II) –The Fair Housing Act.

Five day unlawful detainer notice

After the thirty or seven day notice expires, the landlord must serve a five day unlawful detainer notice under NRS 40.254 to proceed with a summary eviction.

The five day unlawful detainer notice must advise you that you have five judicial days to move or file an affidavit with the justice court. If you want to file an affidavit, you have five business days and information on the contesting the eviction is contained above.

Five day lease violation/Three day nuisance notices

NRS 40.2514 and 40.2516 contain the provisions for a three day nuisance notice and five day lease violation notice, respectively. While nuisance and lease violation are different grounds for eviction, the defenses and procedure are similar.

How much time do I have?

With a five day lease violation notice or a three day nuisance notice, you do not count weekends, holidays, or other days the court is closed. You also do not count the day you are served.

How do I avoid the eviction?

With a five day lease violation notice, your notice must provide five days to cure or remedy the lease violation. Nevada law also allows you to cure a nuisance. This means that if you can fix the problem within three days for a nuisance or five day for a lease violation, you will have a legal defense to the eviction. In some situations, the lease violation or nuisance is so severe that the law may prevent you from saving your tenancy even though you fixed the problem or it does not recur.

Grounds for eviction

Your eviction notice should contain the reasons for the eviction. Justice Court Rule of Civil Procedure 101. The reasons should contain enough information for

you to figure out what the landlord is referring to and enable you to present a meaningful defense to the court.

What is a lease violation?

A “lease violation” is self explanatory: a violation of your lease. To constitute a reason to evict you, the lease violation must be “material.” “Material” means important or one of the reasons your landlord rented to you. Repeated instances of minor violations of your lease also constitute a basis to evict you. For example, not paying a security deposit is a material lease violation; not paying your rent on time is not a material lease violation if you pay the rent and late fees. Repeated instances of late payment of rent would be a basis to evict you.

What is a nuisance?

“Nuisance” is harder to define. Nevada law defines nuisance as “conduct or an ongoing condition which constitutes an unreasonable obstruction to the free use of property and causes injury and damage to other tenants or occupants of that property or adjacent buildings or structures. . . .” NRS 40.2514(4). “Nuisance” also includes “anything which is injurious to health or indecent or offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.” NRS 40.140.

In common terms, a nuisance is anything serious or repeated that affects your neighbors or the condition of your dwelling. For example, a party celebrating your child’s graduation is probably not a nuisance. Repeated wild parties would be a nuisance.

Five day unlawful detainer notice

If the landlord does not agree that the conduct has ceased or otherwise wants to continue with the eviction, you will receive a five day unlawful detainer notice after the five day lease violation or three day nuisance notice expires.

The five day unlawful detainer notice is the required notice if the landlord seeks a summary eviction order. The five day unlawful detainer notice must advise you that you have five judicial days to move or file an affidavit with the justice court.

If you want to file an affidavit, you must file within five business days and the information on the contesting the eviction is contained above.

Four Day Housebreaker/Squatter Notice

"Housebreaking" is a person who breaks into a house without permission for the purpose of taking up residency. A person who enters an open or unsecured house without permission for the purpose of taking up residency is guilty of unlawful entry. Both housebreaking and unlawful entry are crime and you can go to jail. The police can take you to jail and the landlord can lock you out.

If you are taken to jail as a result of housebreaking or unlawful entry, the landlord can lock you out without notice. However, the landlord must post a notice advising you that you can contest the lockout by filing a complaint in Justice Court where you live. You must deliver a copy of this complaint to the landlord or the landlord's agent. You do not have to file a complaint and can just move, but the landlord must provide 20 days for you to retrieve your property. **DO NOT TRY TO REENTER THE DWELLING**-this is a criminal offense punishable by up to four years in jail.

If you cannot find any notice, check with your local Justice Court. The landlord must file a copy of the notice with the Justice Court and it may be listed under "Current Occupant" so provide your address.

If you enter into a lease with someone who is not the landlord of the landlord's agent, you may be still guilty of housebreaking. This is not a crime, but the landlord can evict you with a housebreaker notice. The landlord must first serve a four day housebreaker notice.

A four day housebreaker notice is combined with the four day forcible entry and four day forcible detainer notice. These notices should be served to you, but can be posted on the property and mailed to you and can contain the name "Current Occupant." If you have received the any of these notices, you then have four business days after the day you receive the notice to either move out, request a delay in the eviction (stay), or contest the eviction. Do not count weekends, holidays, and other days the court is closed. To contest the eviction, you must file an affidavit with the Justice Court in your township.

The landlord may also serve a five day unlawful detainer notice. This notice is similar to the 4 day housebreaker notice, except you get one extra weekday to file your affidavit.

What Happens After I Contest the Notice?

The court will review your affidavit. If your affidavit contains an element of a legal defense, then the court will schedule a hearing. If your affidavit does not contain an element of a legal defense, the court will order your eviction. An eviction order will be signed by the judge and a constable/sheriff will lock you out within thirty six hours (unless the court granted your stay request).

If your affidavit raised an element of a legal defense, then the court will schedule a hearing. You and your landlord will be required to attend the hearing and the court will determine if you have raised a legal defense. If you fail to raise a legal defense, you will be locked out. The court can delay the lockout by providing 20 days before the constable/sheriff locks you out.

If you have been locked out, you will then have 21 days to retrieve your property. The landlord does have the right to charge reasonable storage fees, or moving and storage fees before returning your property to you.

What happens to my personal property left behind?

The landlord can dispose of your property within 21 days of when the landlord locked you out. If you do not know when the landlord locked you out, then you should consider giving up the right to contest the lock out if you really need your property. The complaint to challenge the lock out may result in waiting longer than the time you have to retrieve your property and your property may be gone.

If you want to challenge the landlord's right to hold your property, then you should file an affidavit with the court to challenge the landlord's right to hold your property. This must be filed within 21 days of the lock change. The landlord has the right to charge reasonable storage fees, or moving and storage fees before returning your property to you.

If you have been through the court process or the constable/sheriff locked you out, then you only have 14 days to file a motion (not affidavit) to challenge the

landlord's right to hold your property. The landlord must wait 21 days, however, before disposing of your property.

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Part 5-Problems After Moving Out

I. Property Left Behind

NRS 118A.460 governs the landlord's responsibilities for personal property left behind by you. Conversion law also governs the landlord and anyone else who exercises dominion or control over the property of another. *Bader v. Cerri*, 609 P.2d 314 (Nev. 1980).

How long must the landlord store my property?

NRS 118A.460 requires the landlord to store and protect your property for thirty days after you leave. If you do not retrieve your property within thirty days, the landlord can dispose of the property in a commercially reasonable manner. The landlord must provide notice to you that your property will be disposed after fourteen days expire and the landlord must make a reasonable attempt to locate you. At a minimum, the landlord must send notice to your last known address. The landlord shall provide at least thirty days before the landlord can legally dispose of your property.

For essential personal effects, like medication, baby formula, basic clothing and personal care items, the landlord must allow you to retrieve these items for at least five days from the day of the lockout.

What can the landlord legally charge me?

Before returning your property, a landlord can require you to pay reasonable and actual storage, inventory, and moving charges, but cannot charge you for back rent. If the landlord does withhold your property for back rent, you can sue the landlord to return the property and for up to \$2,500 in statutory damages, plus actual damages, under NRS 118A.520 and 118A.390.

What charges are reasonable?

A reasonable charge to store your property would be up to the daily prorated rent you paid when you lived in the dwelling. For example, if you paid \$300 per month in rent, the landlord could reasonable charge \$10 per day (\$300 divided by 30) to store your property. Inventory and moving costs would be based on the average costs of those services charged by a moving service in Nevada.

How can I dispute the landlord's actions?

NRS 118A.460 requires the landlord to provide a reasonable opportunity for you to retrieve your property. If not, you can file a motion to contest property lien under NRS 40.253(7).

What is a motion to contest property lien?

If you dispute the landlord's charges as unreasonable or unlawful, or the landlord will not allow you to retrieve your property, you can file a motion to contest property lien. This would allow a judge to determine if your landlord should return your property, and how much, if anything, the landlord can charge for the return of your property.

You must file a motion to contest personal property lien within twenty days after you have moved, been evicted, or requested or received notice of the storage costs, whichever is latest.

For essential personal effects, you must file this motion within five day of the lockout and an expedited hearing must be scheduled within five days of filing the motion.

What if I filed too late?

If you do not file your motion within twenty or five days, of vacating the premises, this does not mean that you do not have any other alternatives. One alternative is to file a small claims action against the landlord for the value of the property that you could not get back. You can sue the landlord for negligence based on a violation of NRS 118A.460 or conversion (as explained below).

What is conversion?

If the landlord has not stored your property for thirty days and gave your property to someone else, you can claim conversion and sue this person. “Conversion” is the civil law equivalent of stealing or embezzling. A conversion occurs whenever there is a serious interference to a party's rights in his property. *Wantz v. Redfield*, 326 P.2d 413 (Nev. 1958).

Conversion exists where either the landlord or someone else exerts wrongful dominion or control over your personal property or wrongfully interferes with your control over the property. The act constituting “conversion” must be an intentional act, but it does not require wrongful intent and is not excused by care, good faith, or lack of knowledge. Conversion does not require a manual taking. “Conversion” is where one makes an unjustified claim of title to personal property or asserts an unfounded lien to said property which causes actual interference with your right of possession. *Bader v. Cerri*, 609 P.2d 314, 317 n. 1 (Nev. 1980).

When conversion occurs, you should receive full compensation for your actual losses. *Boylan v. Huguet*, 8 Nev. 345 (1873). The return of the property converted does not excuse the conversion. Such return does serve to lessen the damages. *Winkler v. Hartford Acc. and Indem. Co.* 168 A.2d 418 (N.J. 1961).

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Part 6-Foreclosure or Sale and Tenants’ Rights

I. Foreclosure Process

NRS 40.255 deals with the rights of a tenant whose landlord has sold or transferred the property or is going through foreclosure. NRS 40.255 can be broken up into two different situations: when landlord voluntarily transfers property, either through sale or gift, and involuntarily transfer, like foreclosure. We will cover foreclosure first.

Generally, you will know whether your landlord is going through foreclosure. The bank must provide notice to the landlord and post this notice on the property. If you have any doubts, property records are available to the general public. Your local county recorder’s office will have a notice of default (initiating the foreclosure process), the notice of sale (the last notice before the sale), and any

other foreclosure notices required by law. Transfer of title documents will also be available. These documents demonstrate who has legal title of your dwelling and whether a foreclosure is pending. Most recorder offices require the parcel number of your property. This information can usually be obtained from the county tax assessor.

Nevada's trust deed foreclosure process is long, at least three months and twenty-one days. Even though the landlord is in foreclosure, you must continue to pay rent to the landlord or you can be evicted.

Notice of Default

The most common foreclosure process in Nevada is the trust deed foreclosure contained in NRS Chapter 107. If your landlord fails to make a mortgage payment, the bank or its agent must first serve a notice of default and election to sell. The bank or its agent must also post this notice of default, along with a Notice of Tenant's Rights, on your dwelling, NRS 107.086. The Notice of Tenant's Rights purportedly informs you of your rights as a tenant and the problems with this notice are explained in greater detail below.

Three months must elapse before the bank can continue with the foreclosure. All of this time, you must pay rent to the landlord or you can be evicted. Informal mediation with the lender is always available to your landlord, or filing a Chapter 13 bankruptcy, and this may cause a delay in the foreclosure process. It is not uncommon for the foreclosure process to take more than three months and twenty-one days.

Notice of Sale

Three months after the notice of default is issued, or after the mediation process has concluded, whichever is longer, the bank must then send a notice of sale. This notice must advise the landlord that the dwelling will be sold twenty-one days (or more) after the notice of sale is recorded. You will this notice of sale, along with another Notice of Tenant's Rights. The Notice of Tenant's Rights informs you of your rights as a tenant. Your landlord has until five day before the sale at auction to save the dwelling from foreclosure.

Do I have to pay rent even though the landlord is in foreclosure?

Even though the landlord may not be paying the mortgage, you must continue to pay the rent as long as you live in the dwelling and the landlord owns the property. NRS 118A.210 requires a tenant to pay rent for use and occupancy of a dwelling. If rent is not paid, the landlord can evict you with a five day pay rent or quit notice. If you do not pay the rent, you will be evicted.

Can a real estate agent enter my home?

The landlord or real estate agent has a right to show your dwelling to potential buyers or for the purposes of inspection, to make necessary repairs or to provide necessary services, or to exhibit the dwelling to workmen, or anyone else with a bona fide interest in inspecting the premises. NRS 118A.330(1). The landlord or real estate agent must provide twenty-four hours advance notice and you cannot unreasonably withhold your permission to allow these showings.

If the landlord or real estate agent provides twenty-four hours advance notice, accesses your dwelling based on purposes of showing the dwelling to prospective buyers, and visits at reasonable times during normal business hours, then you may not be able to do anything about it.

Is a lock box legal?

A lock box is not legal under Nevada law because the landlord must provide twenty-four hours notice before entering your dwelling and the lock box allows instant entry. A lock box is a locked container that is attached to your front door handle. The container holds the key to your dwelling. The lock box provides little or no notice and you can refuse to allow the landlord or real estate agent to put the lock box on your door. If the landlord installs a lock box on your door without your permission, you can seek an injunction.

NRS 118A.500 allows you to seek an injunction to stop the landlord from abusing the right to access your dwelling. A lock box would be an abuse of the landlord's

right to access your dwelling. If a lock box is on your door handle, you should send a written request to the landlord asking the landlord to respect your rights under NRS 118A.330. NRS 118A.500 allows you to terminate the rental agreement or seek an injunction if the landlord abuses access. If you send written notice to the landlord, you should request that the landlord remove the lock box and provide twenty-four hours advance notice before showing the dwelling.

Asking the landlord to comply with NRS 118A.330 is not a reason to evict you. In fact, it would constitute retaliation under NRS 118A.510 and provide a defense to an eviction notice.

If you allow the lock box and want to change your mind, you should notify the landlord. You can refuse to let the landlord or real estate agent into your dwelling without advance notice and you can exclude them or call the police if the landlord or real estate agent enters and will not leave.

No notice is allowed in an emergency. Showing the home to potential buyers is NOT an emergency.

II. Eviction of a Tenant Occupied Dwelling after Foreclosure and Sale or Transfer of Ownership

Foreclosure/How much time will I have?

Three months after the notice of default, and twenty-one days after the notice of sale, the dwelling can be sold at auction. Often, the bank will take back the property if no acceptable bid is made at the foreclosure auction. After title to the property is taken away from your landlord, you can voluntarily leave after the foreclosure and we recommend providing notice to the new owner. NRS 40.255 provides this right.

If you stay, you must pay your rent and abide by the terms of your lease. The new owner must honor your lease and cannot evict you until it expires. If you live in residential housing, four units or less, the new must provide a sixty day notice.

The terms of your lease are enforceable during these sixty days. After the sixty days expire, the new owner must serve a summons and complaint for unlawful detainer under NRS 40.290 through 40.420 (plenary process). Summary eviction under NRS 40.253 is NOT legal.

If you live in an apartment complex or housing of more than four units, the new owner must serve a three day notice. Usually, a new owner of an apartment complex does not evict tenants without a reason, like nonpayment of rent.

If the owner still wants to proceed, the new owner must serve a summons and complaint for unlawful detainer after the three days expire. Summary eviction under NRS 40.253 is NOT legal.

If the procedure outlined above is followed, you will not have a defense to the eviction. Still, you can file an answer and appear at your hearing to ask the judge for more time to move. By law, the judge can allow up to 10 extra days before ordering your eviction. NRS 70.010.

What is “cash for keys”?

“Cash for keys” is a *voluntary* program where the new owner of a home will give you money in exchange for your promise to leave in certain amount of time, usually less than thirty days. The new owner may ask you to clean the premises before leaving. If the new owner will only pay you after you move out, then you should get the cash for keys offer *in writing*.

Sale or Transfer/How much time do I have?

"Residential Sale"

If the landlord sells or transfers your residential dwelling (four units or less), and not through a foreclosure, then the new owner must honor your lease provide a thirty day notice. After the thirty days expire, or your lease expires, whichever is later, the new owner must serve a summons and complaint for unlawful detainer

(plenary process). This process takes at least three weeks. You can answer the complaint and appear at your hearing, but you will not have a legal defense if the new owner follows this procedure. You can ask the judge for more time to move and the judge can allow up to ten extra days before eviction. NRS 70.010.

More than four units

If you live in a dwelling that contains more than four units, then the new owner must provide a three day notice, followed by a summons and complaint for unlawful detainer.

Do I have to provide a copy of my lease to the new owner?

You do not need to show the new owner your lease. However, you must demonstrate to the new owner and to the court that you are a bona fide tenant to avoid the housebreaker/squatter notice (explained above). While a lease helps establish that you are a bona fide tenant, there are other ways. Rent receipts, utility bills, and statements from neighbors also work.

III. Security Deposits after Foreclosure

After the foreclosure, sale, or the property otherwise changes hands, your landlord has to transfer your deposit to the new owner, minus the deductions for damages, beyond ordinary wear and tear, cleaning fees, and unpaid rent and late fees. If the security deposit is transferred, the new owner then has the same obligations as the previous landlord and must return the deposit or provide a written accounting within thirty days after you move out.

After a foreclosure, the old owner may also return the security deposit to you, after making any deductions allowed under NRS 118A.242 (explained above).

If the security deposit is not transferred and not returned to you, you can sue the old landlord under NRS 118A.242 if more than thirty days have expired after the property transfers.

The new owner cannot charge you an additional security deposit for thirty days or the duration of your rental agreement, whichever is longer.

If your deposit was transferred, or the new owner required a deposit, the new owner should return your deposit or supply a written accounting within thirty days after you move out. If not, you can sue the new owner. The lawsuit against the new owner would be based on a violation of NRS 118A.242.

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