

PROPERTY MANAGEMENT AND SERVICE OF NOTICE

*Gina C. Session, NVR Legal Information Line Attorney
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Callers to the Legal Information Line frequently ask how to properly serve notices on tenants pursuant to NRS Chapter 118A Landlord and Tenant: Dwellings. Service of notice means the giving of information to a person who is entitled to receive it. Service of notice must be carried out in compliance with the law.

What does the law say? The answer to this question requires reference to both NRS Chapter 118A and NRS Chapter 40 Actions and Proceedings in Particular Cases Concerning Property. NRS 118A.190 requires that written notices proscribed by Chapter 118A be served by the method provided in NRS 40.280. NRS 118A.190(2).

NRS Chapter 40 deals with primarily with evictions whether due to foreclosure or a failure to pay rent. In 2019 the legislature amended NRS 40.280 and changed the requirements for service of eviction notices. Prior to the change, notices could be served by anyone to the tenant in the presence of a witness. The legislature changed the means by which notice could be given to service by “the sheriff, a constable, a person who is licensed as a process server pursuant to Chapter 648 of the NRS or the agent of an attorney licensed in this state...”. NRS 40.280. Though this change was specifically meant to address notices required for eviction proceedings, because of the language in NRS 118A.190 the change applies to the service of written notices included in NRS Chapter 118A as well.

Because the change was made to NRS Chapter 40 and not Chapter 118A, it is not clear which written information that a landlord provides to a tenant must be served by legal process and which written information can be provided in a less formal matter. The written notices in Chapter 118A fall into three categories:

1. Written notices that must be served in compliance with NRS Chapter 40.
2. Written notices required by NRS Chapter 118A that provide specific direction about how written information can be provided to the tenant. The specific directions in NRS Chapter 118A should be followed instead of the using the methods in NRS Chapter 40.
3. Written notices required by NRS Chapter 118A where it is not clear what constitutes proper service.

The following is a list of the actions that require legal service of written notice pursuant to NRS Chapter 40:

1. All written notices required for eviction of a tenant. These notices are spelled out in Chapter 40. They include for example the 7-day notice to pay or quit, a notice to quit for unlawful detainer and no cause notices at the end of a lease.
2. NRS 118A.300 Advance Notice of Increase in Rent. A landlord may not increase rent unless “the landlord serves the tenant with written notice, 60 days or, in the case of any periodic tenancy of less than 1 month, 30 days in advance of the first rental payment to be increased, advising the tenant of the increase.” The service of written notice of an increase in rent must comply with requirements spelled out in NRS 40.280.

The following are NRS Chapter 118A notices that include specific directions regarding how to provide the information to the tenant:

1. NRS Chapter 118A.242(4) Security Deposit. Within 30 days of the termination of the tenancy the landlord must provide the tenant an itemized, written accounting of the disposition of the security deposit or surety bond. This may be served “by handing it to the tenant personally at the place where rent is paid, or by mailing it to the tenant at the tenant’s present address or, if that address is unknown, at the tenant’s last known address.”
2. NRS 118A.320 Rules and Regulations of the Landlord. For Rules and Regulations adopted after the tenant enters into a rental agreement the rules are only enforceable against a tenant under two conditions: a. If the tenant expressly consents to the rule or regulation in writing or; b. If the tenant has 30 days’ advance notice of the rule or regulation. It is not clear how the advance notice would have to served on the tenant. Best practice would be to serve the written notice in compliance with NRS Chapter 40.
3. NRS 118A.460 Procedure for Disposal of Personal Property. This statute requires that after an eviction or in the case of abandonment of property the personal property of the tenant be securely stored for a least 30 days. After 30 days, the landlord may dispose of the property if they have provided the tenant a 14-day notice of the intent to dispose of the property. The statute specifies that the 14-day notice must be “mailed to the tenant at the tenant’s present address, and if that address is unknown, then at the tenant’s last known address.”

The following are instances where it is unclear what constitutes proper service.

1. NRS 118A.244 Notice of Transfer of Security Deposit or Surety Bond. This written notice is required when a landlord’s interest in the dwelling unit is terminated either by sale, assignment, death, appointment of a receiver or otherwise. The tenant must be notified “in writing of the name, address and telephone number of the landlord’s successor in interest, and that the landlord has transferred to his or her successor in interest the portion of the security deposit remaining after deductions...”. There is no indication how the tenant should be served with the notice. Best practice will be to use the legal service process pursuant to Chapter 40, but if that is not your practice, be sure to document that the tenant actually receives the information.
2. NRS 118A.430 Failure of Tenant to Comply with Rental Agreement or Perform Basic Obligations: Termination of Rental Agreement. The landlord may deliver a written notice specifying the acts or omissions that constitute a breach of the rental agreement and that the agreement will terminate. While this section does not specify how the written notice is to be delivered, because it is a preliminary step for terminating the rental agreement and removing the tenant, it would be advisable to use legal service pursuant NRS Chapter 40 to deliver this notice.

As always, if you are in doubt about the proper means to deliver written notices to a tenant it is best to consult with legal counsel.