

Eviction Process

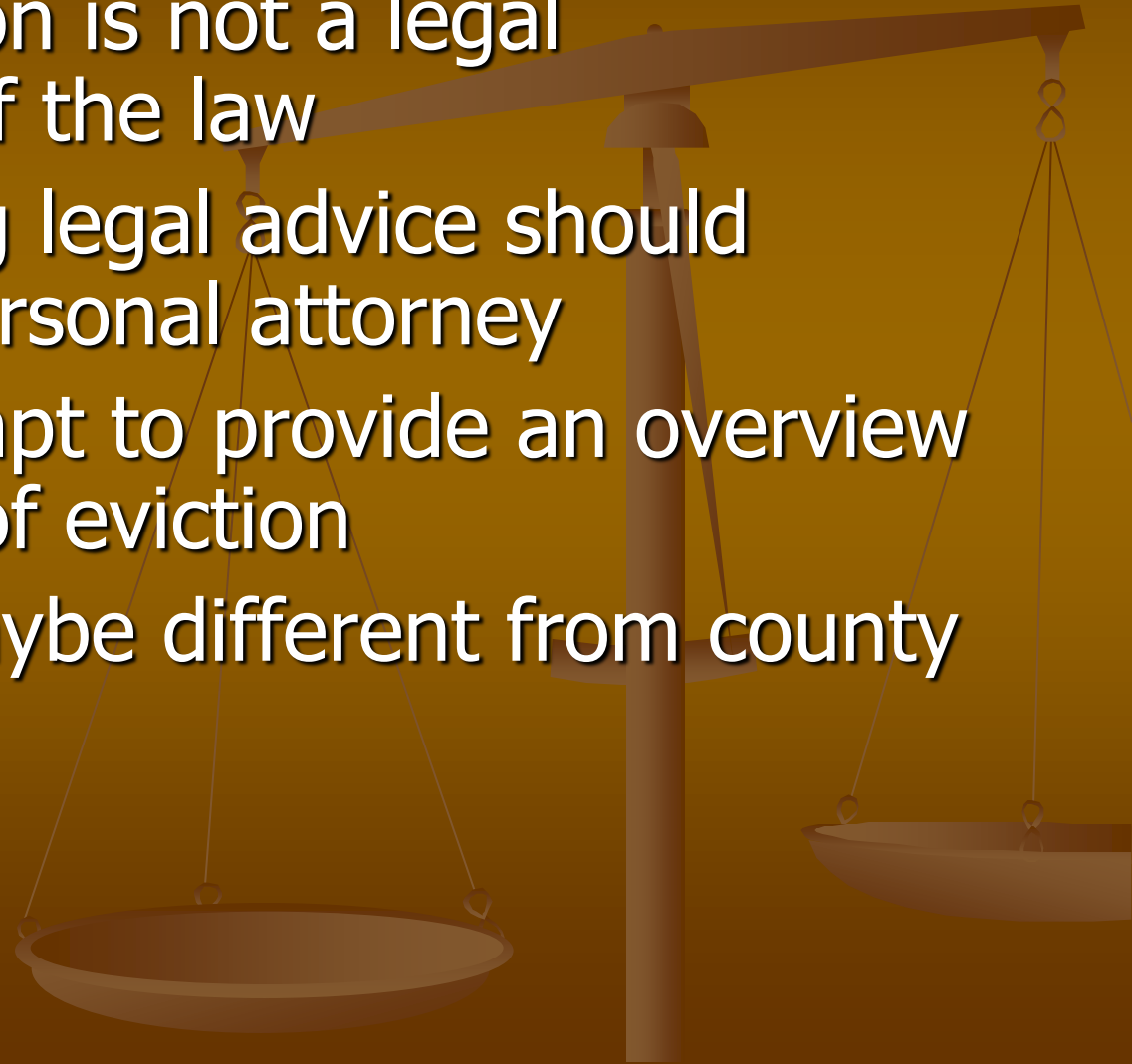


Landlords of Linn County

November 11, 2010

Disclaimer

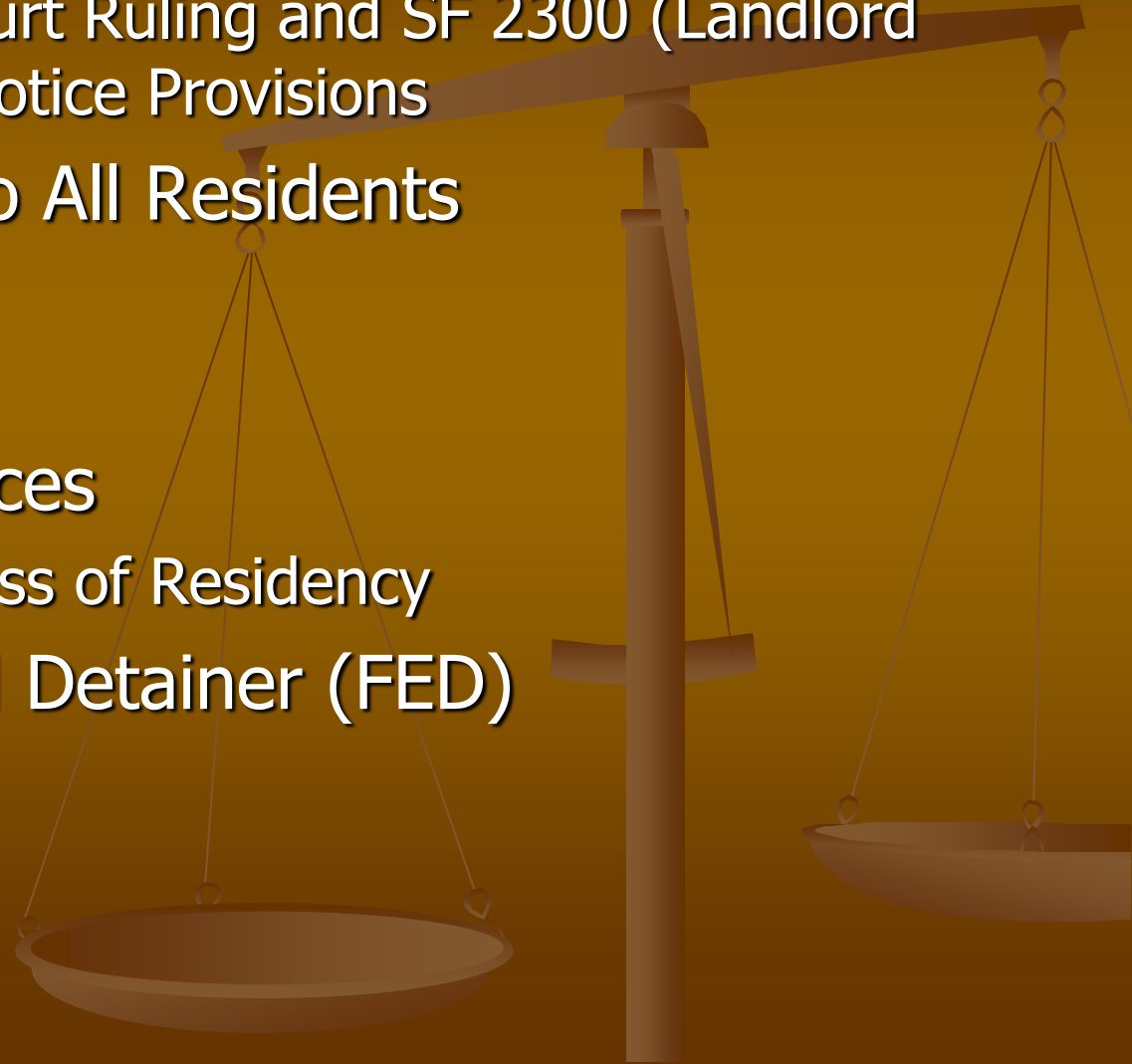
- This presentation is not a legal interpretation of the law
- Anyone needing legal advice should contact their personal attorney
- This is an attempt to provide an overview of the process of eviction
- The process maybe different from county to county



Notices

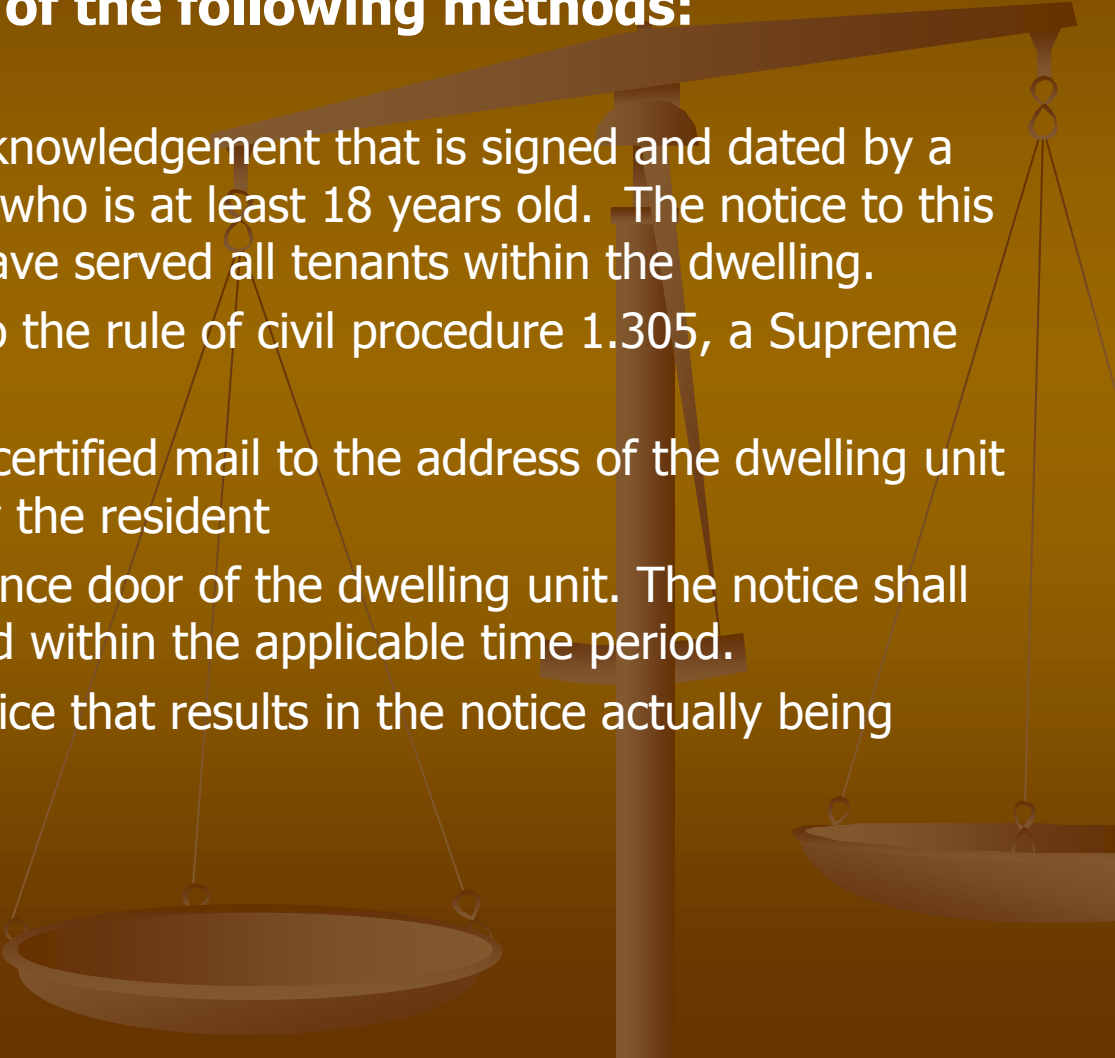
War Eagle Supreme Court Ruling and SF 2300 (Landlord Tenant Act 562A) set Notice Provisions

- Notices That Go to All Residents
 - Rent Increases
 - Rule Changes
- More Serious Notices
 - Could Result in Loss of Residency
- Forcible Entry and Detainer (FED)



Notices That Go to All Residents

You only have to use one of the following methods:

1. Hand delivery to resident
 2. Delivery evidenced by an acknowledgement that is signed and dated by a resident of the dwelling unit who is at least 18 years old. The notice to this one resident is deemed to have served all tenants within the dwelling.
 3. Personal service according to the rule of civil procedure 1.305, a Supreme Court rule.
 4. Mailing by both regular and certified mail to the address of the dwelling unit or to an address provided by the resident
 5. Posting on the primary entrance door of the dwelling unit. The notice shall be dated and must be posted within the applicable time period.
 6. Any method of providing notice that results in the notice actually being received by the tenant.
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More Serious Notices



You only have to use one of the following methods:

1. Delivery evidenced by an acknowledgement of delivery that is signed and dated by a resident of the dwelling unit who is at least 18 years old. Delivery is deemed served to all tenants of the dwelling unit.
2. Personal service according to the rule of civil procedure 1.305, a Supreme Court rule.
3. Posting on the primary entrance door of the dwelling unit and mailing by both regular and certified mail to the address of the dwelling unit or to the resident's last known address, if different from the address of the dwelling unit. A posted notice must be made within the applicable time period for serving notice and shall include the date the notice was posted.

If you use either item 1 or 3, you would be advised to bring an affidavit to court, signed by a notary public, showing which method of service you used. The magistrate may want some guarantee that you performed the notice.

Forcible Entry and Detainer (FED)

You must use either the sheriff or a private service company except for delivery acknowledged by a resident at least 18 years of age. (item 1 listed below)

1. Delivery evidenced by an acknowledgement of delivery that is signed and dated by a resident of the dwelling unit who is at least 18 years old. Delivery is deemed served to all tenants of the dwelling unit. Notice must be completed 3 days prior to the hearing date. (This option can be performed by the landlord. However, it does have dangers, such as the person denying having signed it. The defendant could skip the court date, lose by default, but then file an appeal stating that the landlord forged the signature.)
2. Personal service according to the rule of civil procedure 1.305, a Supreme Court rule. Notice must be completed 3 days prior to the hearing date.
3. If, after two attempts at personal service, using either option 1 or 2, then posting of the court date notice can be made on the primary door of the premises and the notice must be mailed by both regular and certified mail. The posting and mailing must be completed no less than 3 days prior to the court date, which can be no sooner than 8 days from the filing of the FED.

Mail Notices



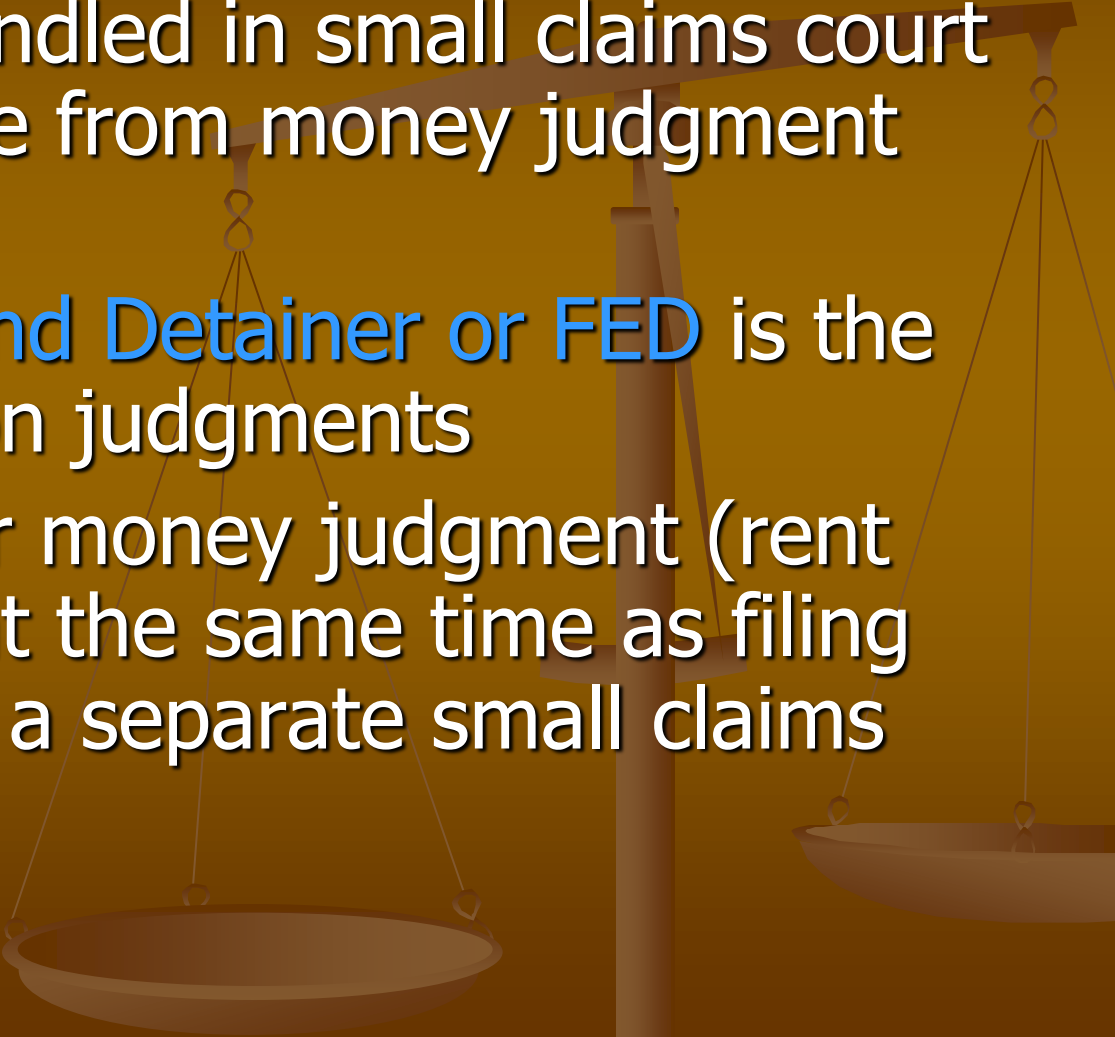
Since the War Eagle decision was totally about the use of certified mail, SF 2300 is cautious about keeping mail options constitutional.

If you use mail, SF 2300 has an automatic 4 days as the delivery assumption.

If you use mail, SF 2300 adds 5 days to the count. The bill has 4, and the counting of time procedures in the code of Iowa (4.1[34]) adds another day.

For example, if it's non-payment of rent, notice to cure, situation, it's 8 days to pay the rent, instead of 4 days in the old law.

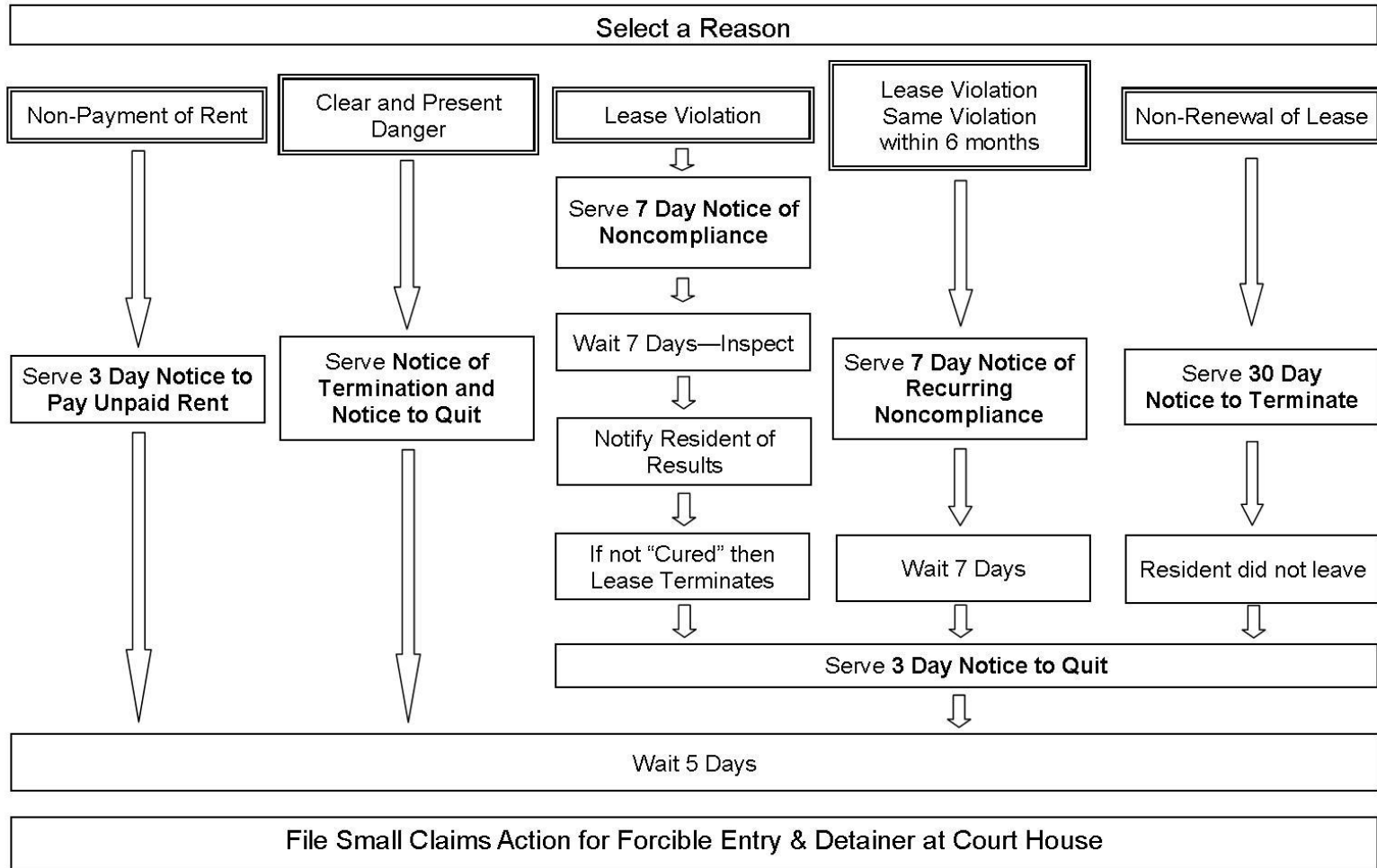
Small Claims Court Actions

- Evictions are handled in small claims court and are separate from money judgment disputes
 - **Forcible Entry and Detainer or FED** is the name for eviction judgments
 - Option to file for money judgment (rent and damages) at the same time as filing for FED but it is a separate small claims action
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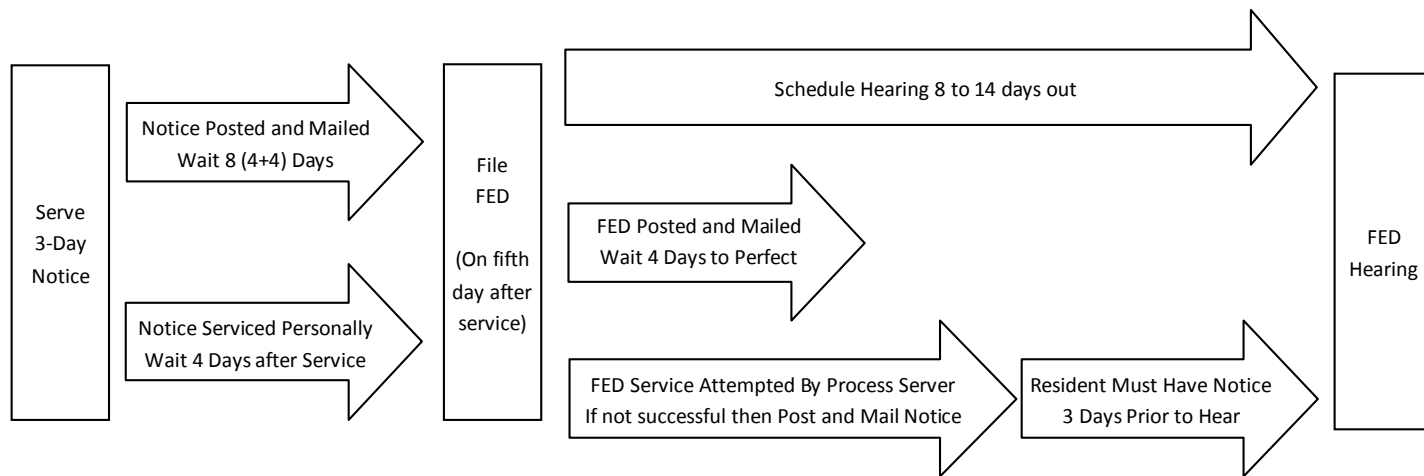


Eviction Process

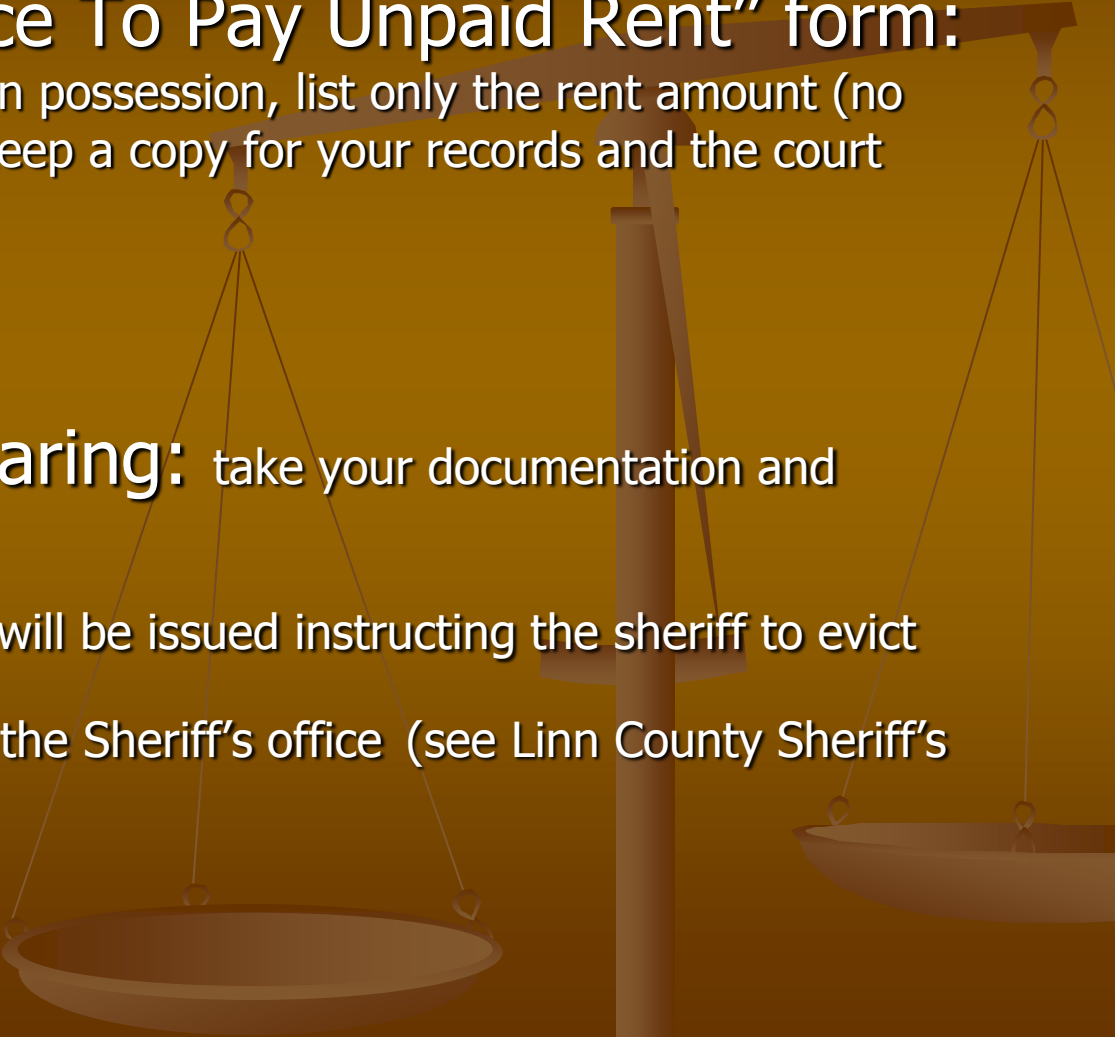
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3 Day Notice Time Line

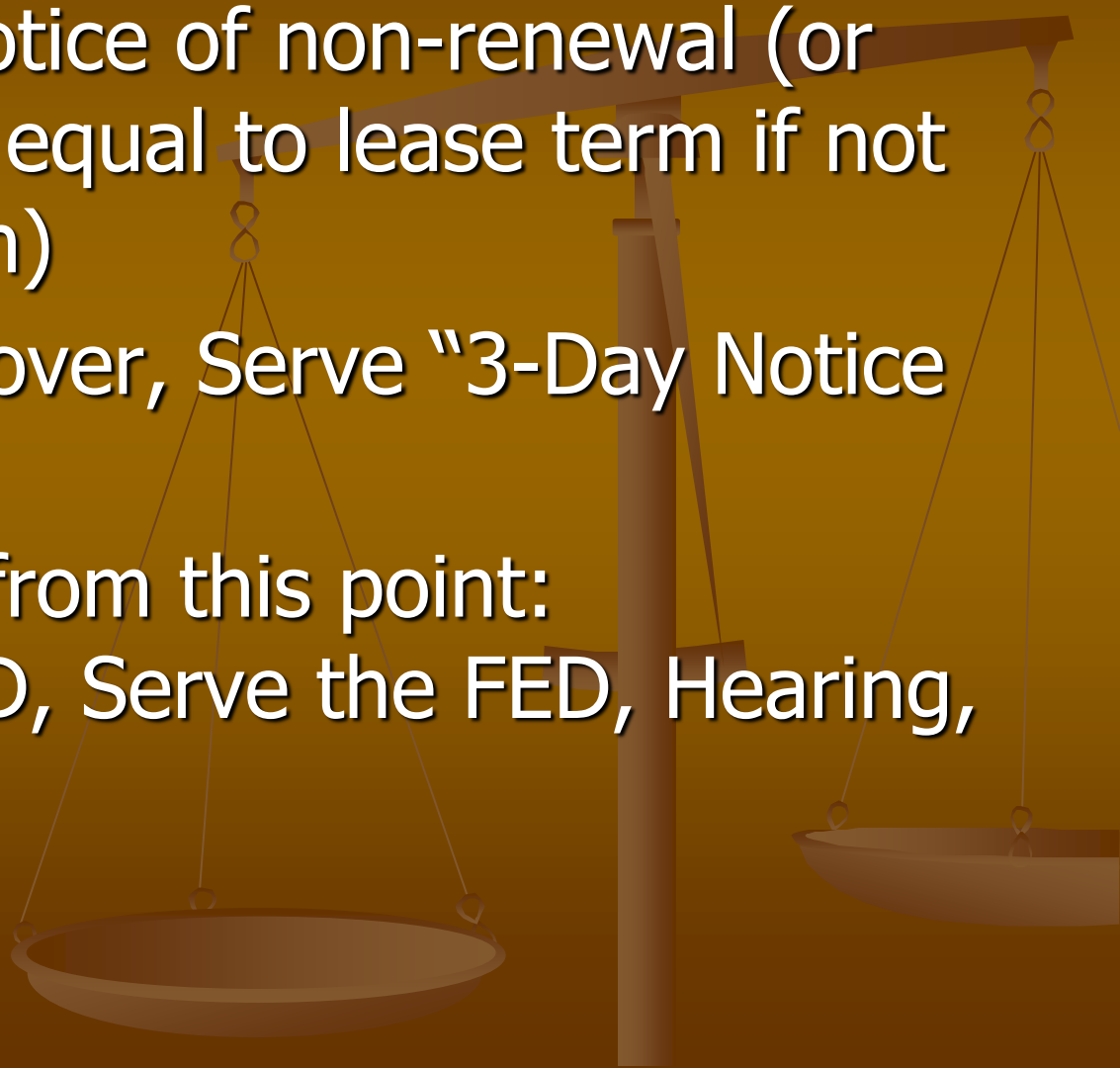


Non-payment of Rent

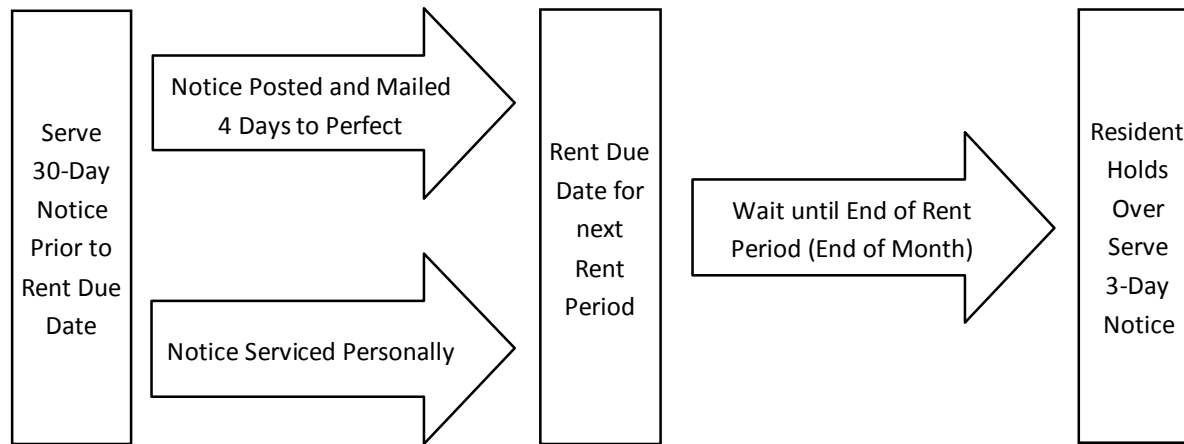
- **Serve “3-Day Notice To Pay Unpaid Rent” form:** include names of all parties in possession, list only the rent amount (no other fees), date the form, keep a copy for your records and the court
 - **File FED**
 - **Serve the FED**
 - **Attend the FED hearing:** take your documentation and supporting information
 - **Writ:** if successful, a writ will be issued instructing the sheriff to evict
 - **Eviction:** schedule with the Sheriff’s office (see Linn County Sheriff’s website)
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Non-Renewal of Lease

- Serve 30-day notice of non-renewal (or amount of time equal to lease term if not month-to-month)
- If tenants hold over, Serve "3-Day Notice To Quit" form
- Follow process from this point:
Service, File FED, Serve the FED, Hearing, Writ, Eviction



Non-Renewal of Lease Time Line

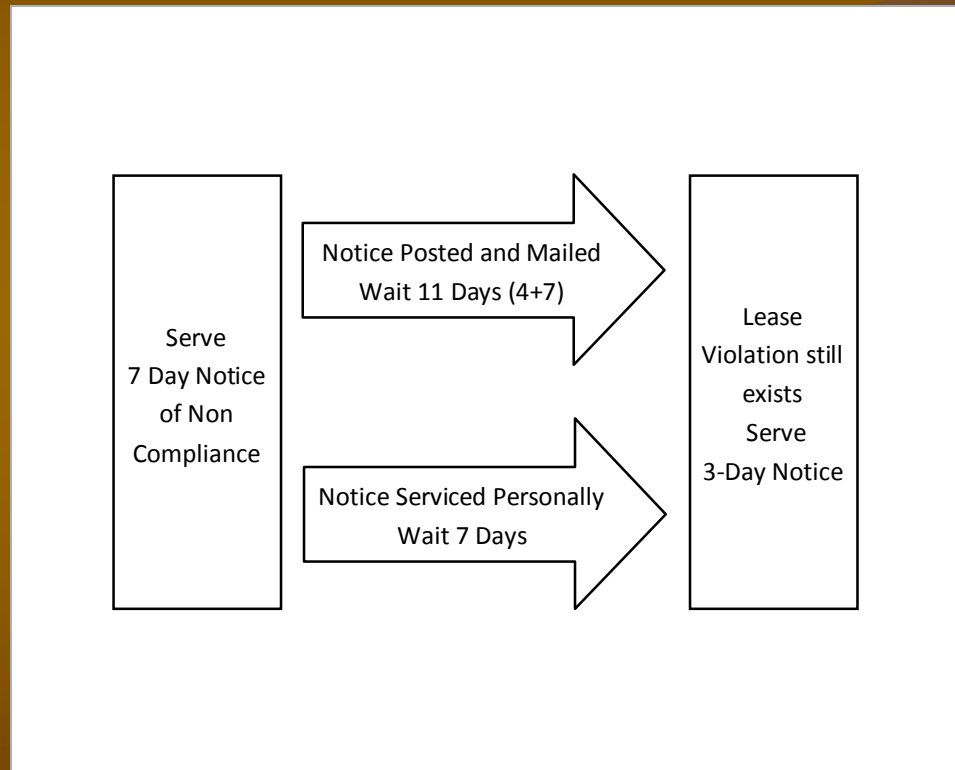


Lease Violation

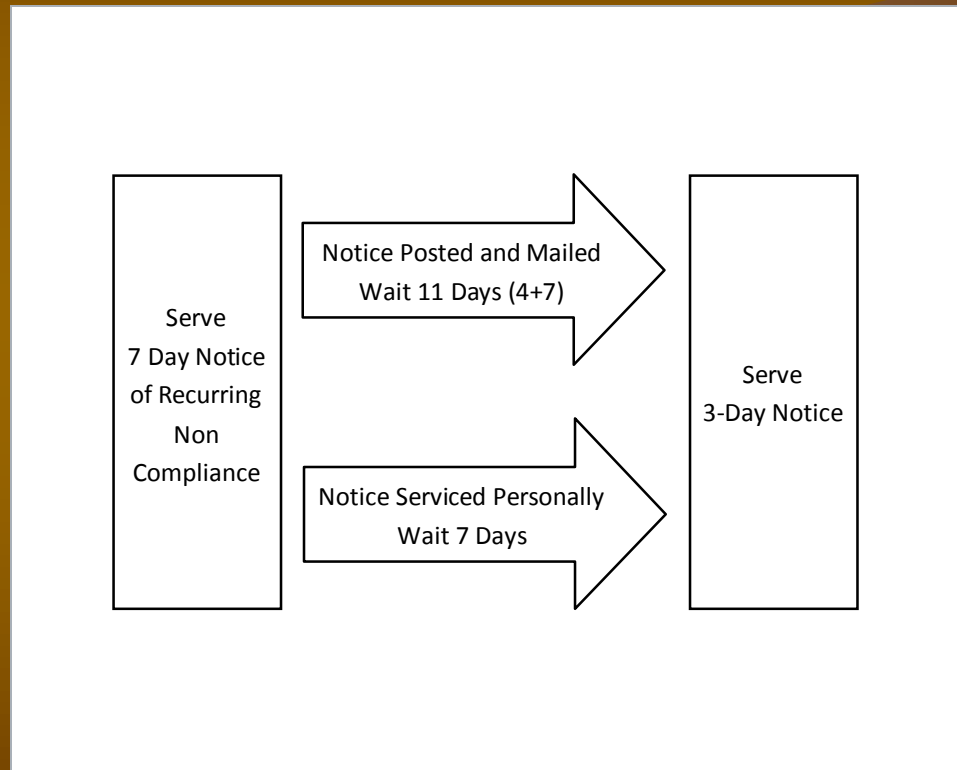


- Serve the “7-Day Notice of Noncompliance with Rental Agreement” form
 - List acts or omissions constituting the violation
 - List tenant actions needed to cure the violations
- If violations corrected then inform tenant violations have been corrected.
- If violations have not been corrected then serve the “3-Day Notice to Quit” form and proceed with the FED process.

Noncompliance Time Line



Recurring Noncompliance Time Line



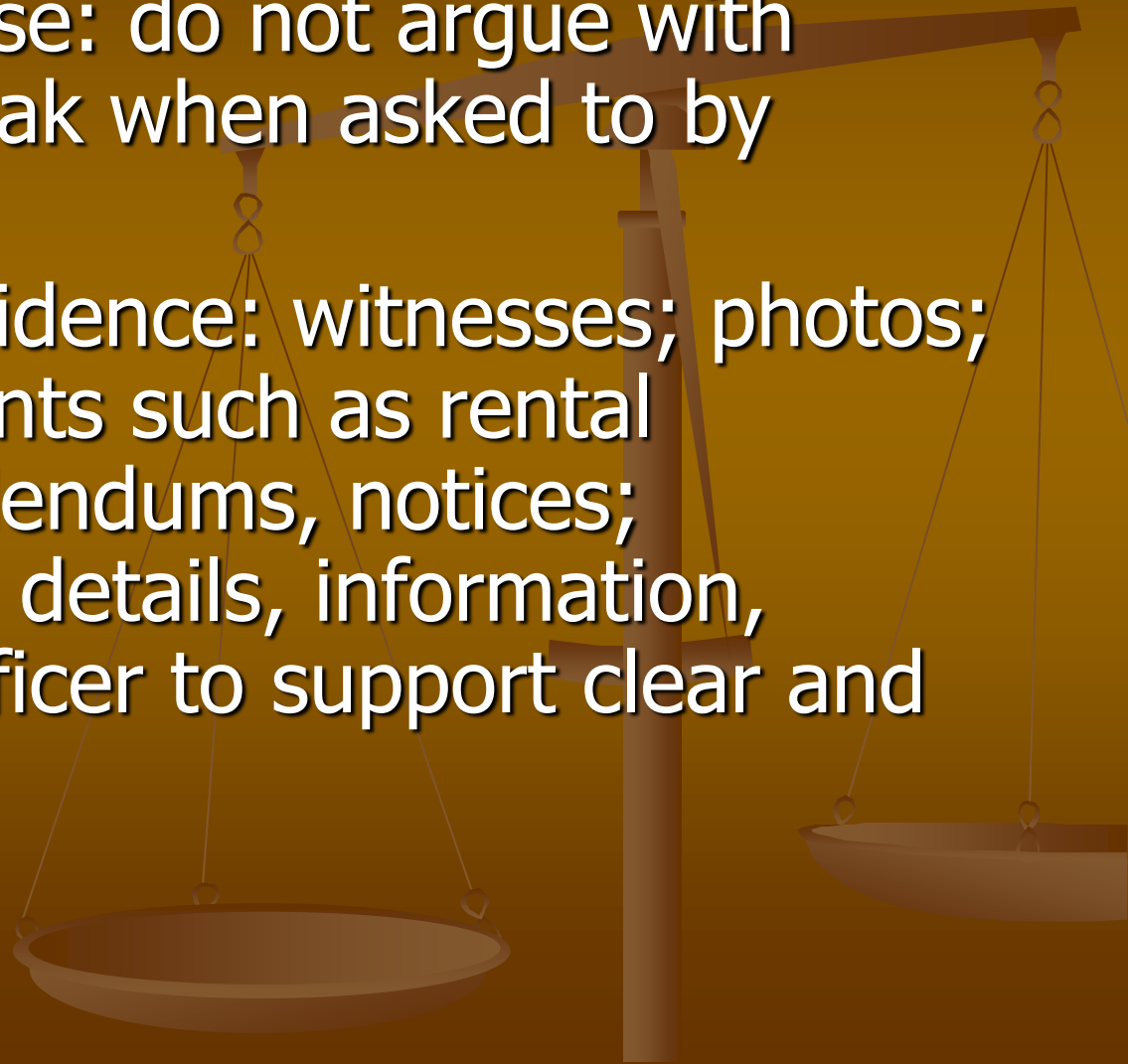
Clear & Present Danger



- Evict when the tenant or tenant's guest created or maintained a threat to others that constitutes a clear and present danger involving:
 - Illegal fire arms OR;
 - Drugs OR;
 - Physical assault OR;
 - Threats
- Serve the "3-Day Notice of Clear and Present Danger" form and proceed with the FED process.

Your Day in Court

- Present your case: do not argue with Judge; only speak when asked to by Judge
- Present your evidence: witnesses; photos; written documents such as rental agreement, addendums, notices; documentation: details, information, notes; police officer to support clear and present danger



Your Day in Court

- If you win, Judge will issue judgment with a possession date
- If you lose then start over correcting any mistakes

