

**EVICTION PROCESS
FORCIBLE ENTRY AND DETAINER
FED
Landlords of Linn County
October 2014**

DISCLAIMER:

THE FOLLOWING IS NOT A LEGAL INTERPRETATION OF THE LAW.
ANYONE NEEDING LEGAL ADVICE SHOULD CONTACT THEIR PERSONAL ATTORNEY. THIS IS
AN ATTEMPT TO EXPLAIN THE PROCESS OF EVICTION. IT MAY VARY FROM COUNTY TO
COUNTY.
AUTHORIZED FOR EDUCATIONAL USE ONLY.

The Eviction Process

1. The Eviction Process consist of three steps.
 - A. Termination of the Tenant's Tenancy
 - B. Court action for a Forcible, Enter and Detainer (FED)
 - C. Forcible Possession if the tenant does not move

2. The following are the reasons you can
Termination a Tenancy:
(See page 3 flow chart).

A. Non-payment of rent

B. Tenant or tenants guest creates a
Clear & Present Danger

C. Tenant commits serious violations
of the rental agreement and/or rules and regulations or
a noncompliance with section 562A.17 of the Code
of Iowa materially affecting health and safety.
1st time and for the 2nd time

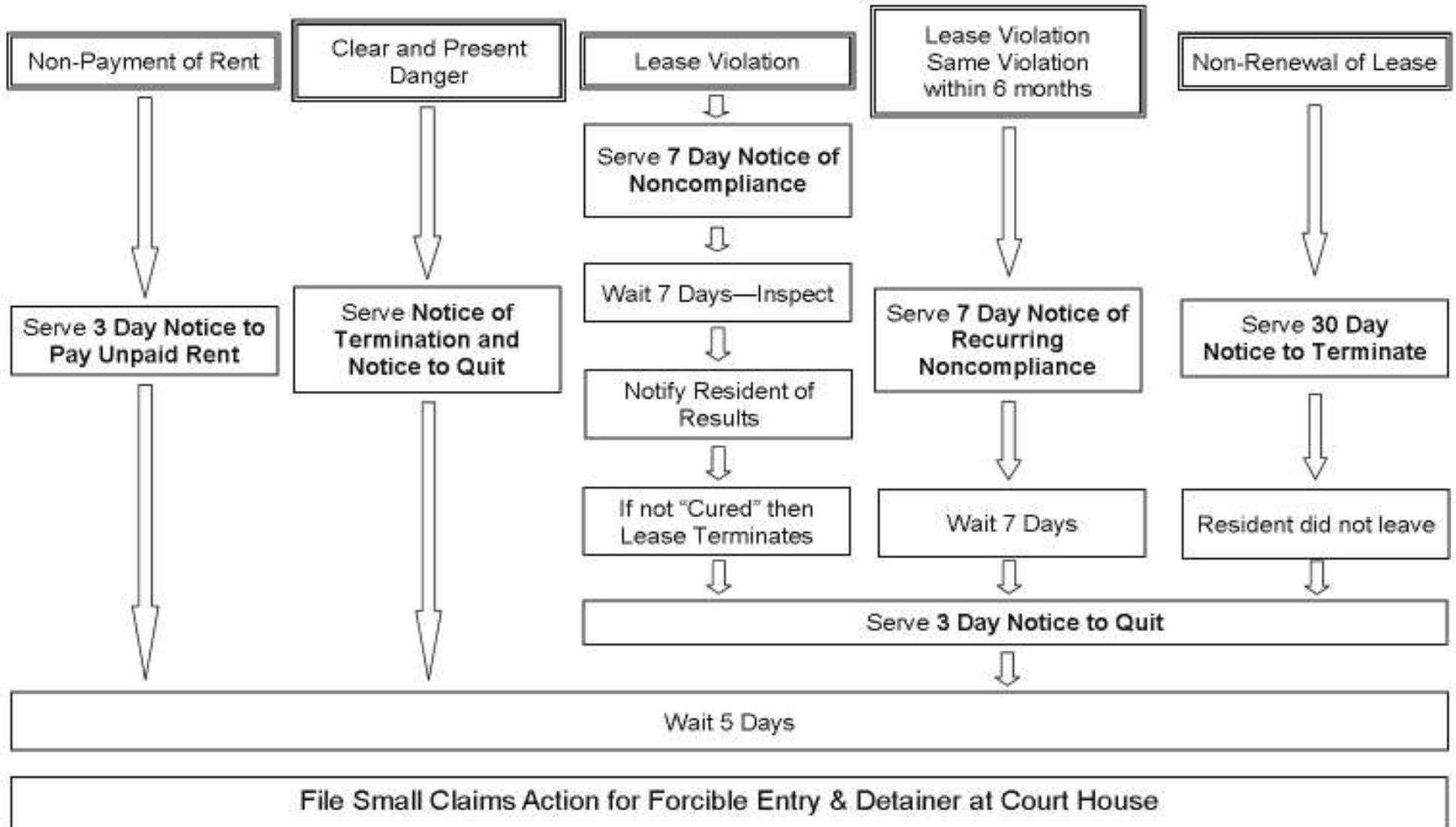
D. Non-renewal of lease or rental agreement



Eviction Process

Landlords of Iowa, Inc

Select a Reason



NON-PAYMENT OF RENT

- 1. Termination of tenancy for unpaid rent. Serve a "3-Day Notice To Pay Unpaid Rent" form.
(See page 15 for sample form.)**

How to serve:

- A. Iowa Rules of Civil Procedure rule 1.305. list 14 ways to effect a good serves. (Copy available on Iowa Courts on Line). Most of the ways are for specific cases.**

Lets discuss the two most common ways used by landlords. They are:

- B. Served notice personally. Hand delivery to resident. Have them sign if possible. Serve is made the day the tenant receives the notices.**

C. Posting and mailing by regular & certified mail. Iowa Code Chapter 648.30 states service is deemed completed FOUR days after notices is deposited in the mail. The tenant then has 3 days to pay the rent. This makes 8 days from date of mailing before you can file for an FED.

2. How to count days. Time line flow chart page 5

A. Notices served personally. The first day after serving date is day one. Then count the number of days need for the notice. Example: If served on Monday. Next 3 days are the 3 day notice requirement. T, W & T. On the 4th day (Friday) after service you can file the FED electronically.

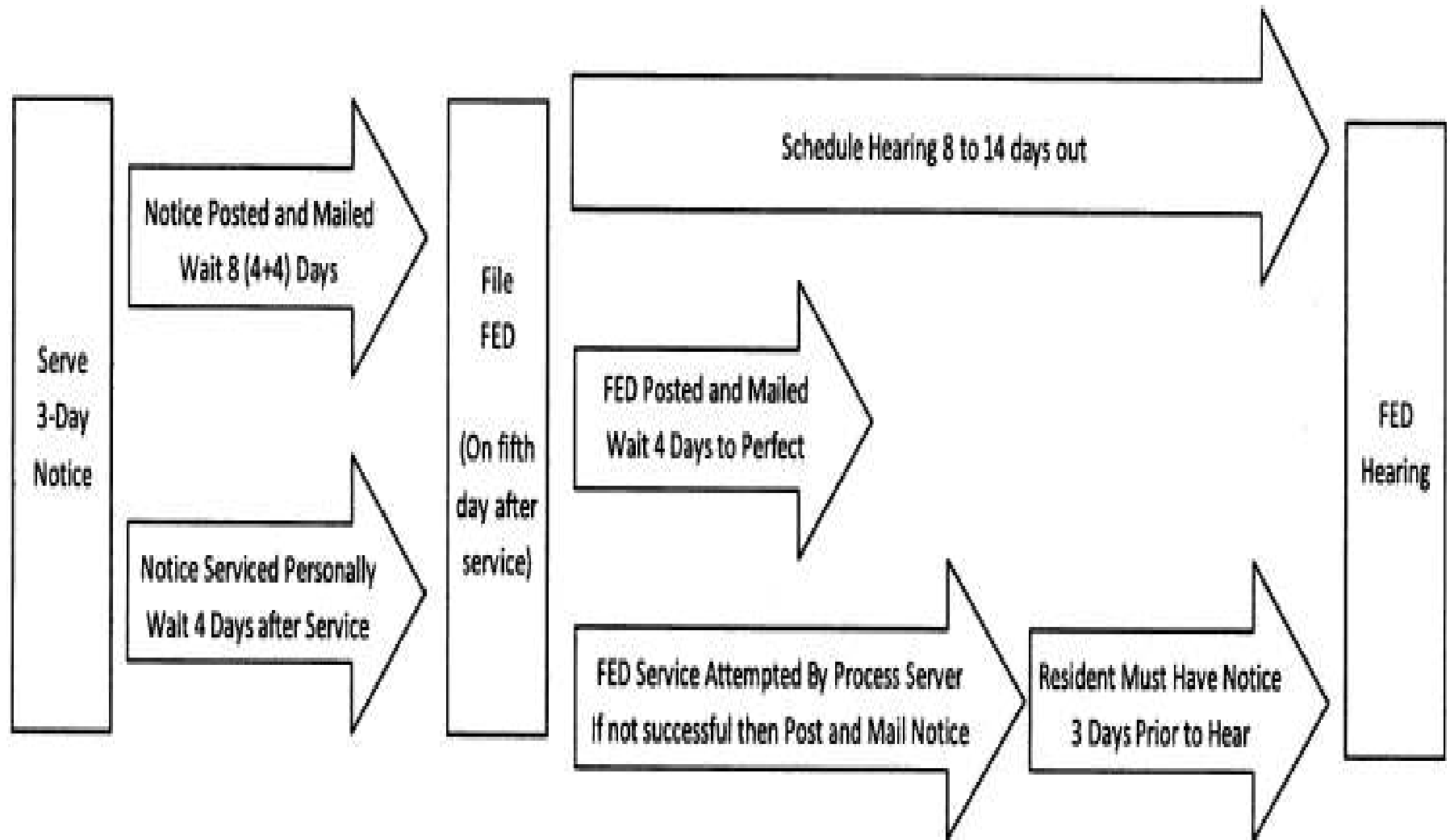
**Discuss with members how they serve.
Problems & successes.**

3. After you have Terminated the tenants Tenancy file an Original Notice and Petition for a Forcible Entry and Detainer in Small Claims Court and have it served on the tenant(s) by a process server. Also you need to file a CONFIDENTIAL INFORMATION FORM & A VERIFICATION OF ACCOUNT, IDENTIFICATION OF JUDGMENT DEBTOR AND CERTIFICATION RE MILITARY SERVICES FORM.

All Iowa court actions must now be electronically filed using there Electronic Document Management System (EDMS)

- 4. In you win your court case and get a Judgment for Possession and the tenant does not move voluntarily file a Request to Issue Writ and Request for General Execution (Praecipe) to have the Sheriff give you Forcible Possession of your property.**
- 5. Enticement of tenants to voluntary move**
- 6. Best way to solve you eviction problem is good tenant screening so you do not rent to the people with a high probability of being evicted.**

3 Day Notice 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.
(See pages 19 & 20 for sample form.)

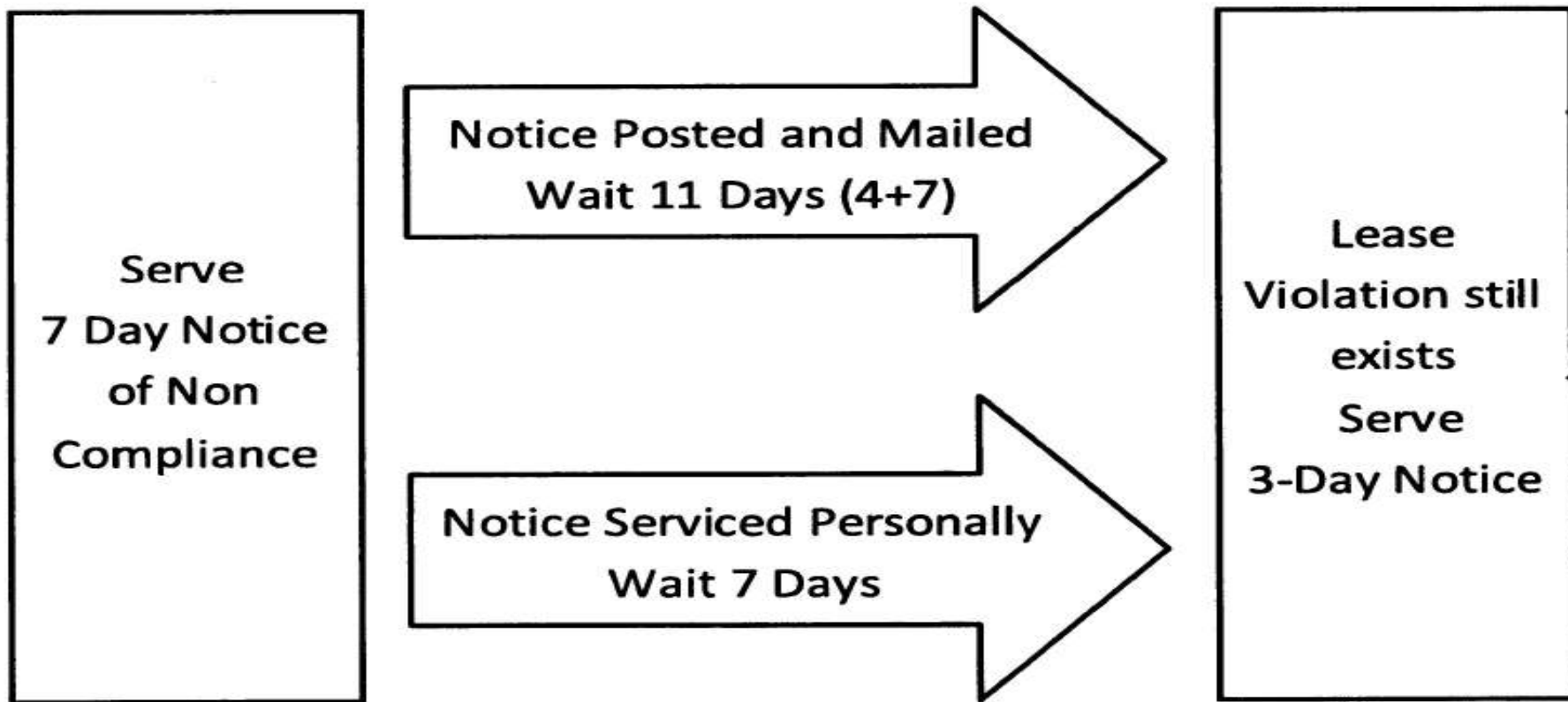
LEASE VIOLATION

- Serve the “7-Day Notice of Noncompliance with Rental Agreement” form. (See page 17 for sample 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.

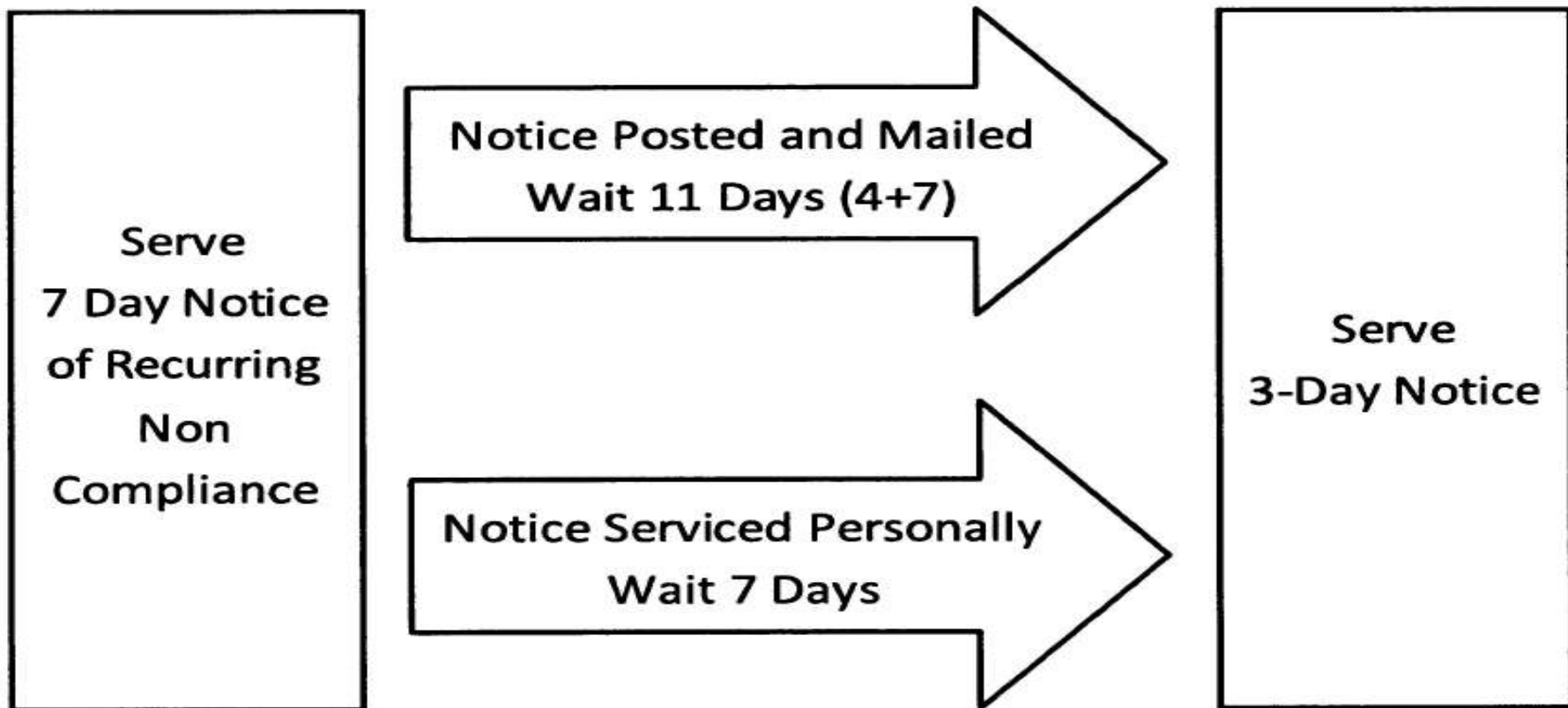
- If violations have not been corrected then serve the “3-Day Notice to Quit” form and proceed with the FED process.

If the same violation occurs within the next six months after the first seven day notice, you give the tenant a "7-Day Notice of Recurring Noncompliance ” stating that the rental agreement is terminated on the seventh day after receipt of the notice. The tenant does not have the right to cure. (See page18 for sample form). If tenant does not move out by the seventh day, serve three-day “Notice to Quit” and proceed with FED process.

Noncompliance Time Line



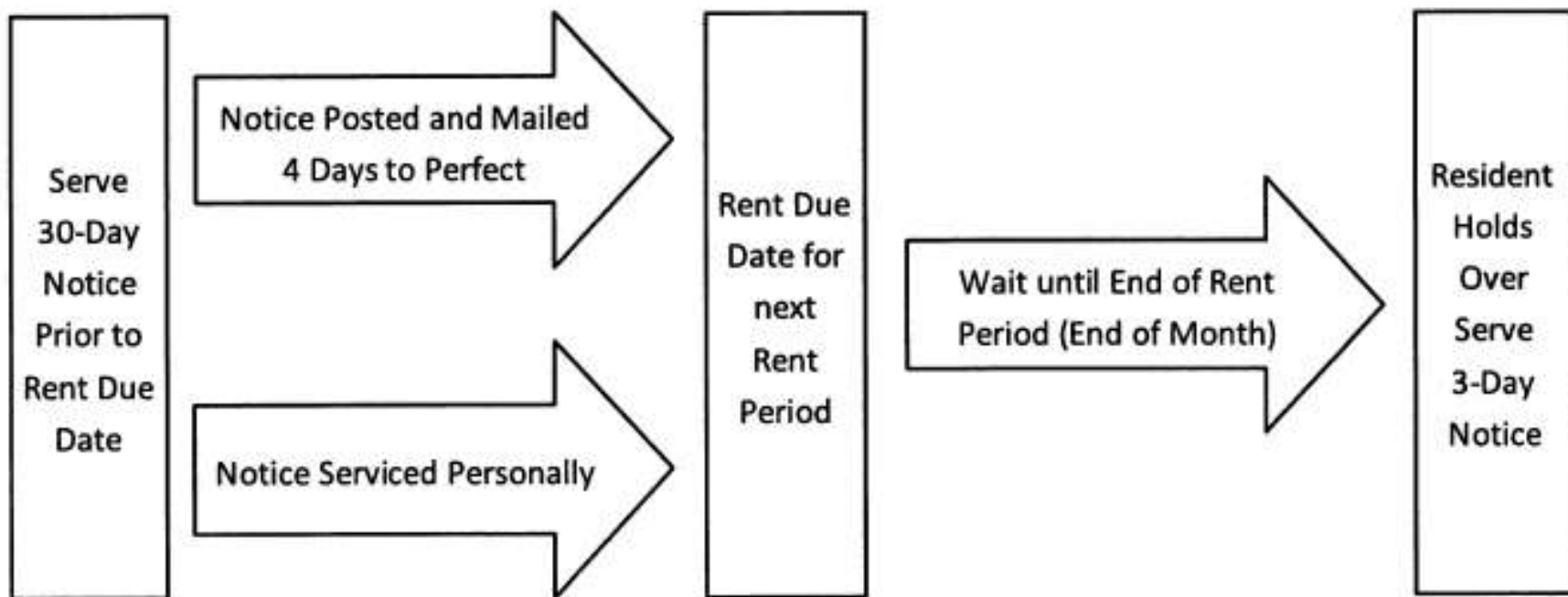
Recurring Noncompliance Time Line



NON-RENEWAL OF LEASE

- ❑ Serve 30-day Notice of Non-renewal of Lease form on or before the rent due date.
(See page 21 for sample form.)
- ❑ If tenants hold over, Serve “3-Day Notice To Quit” form and proceed with the FED process (See page 16 for sample form.)

Non-Renewal of Lease Time Line



Small Claims Court Actions

PREPARATION FOR COURT

- Evictions are handled in small claims court and are separate from money judgment disputes

- 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. Need to file Original Notice and Petition For a Money Judgment. This form is on Courts on Line website.
Serve the notices.

YOUR DAY IN COURT

Go to Court **be** on time, if not, you may loss your case by default. Check in with the bailiff before court time so the Judge/Magistrate knows you are present.

□ You, the Plaintiff, will go first. Present your case: do not argue with Judge/Magistrate or the Defendant, the tenant; only speak when asked to by Judge/Magistrate. Be prepared to rebut what the tenant says if the testimony is not true or is incomplete.

□ 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. **You the Plaintiff must prove your case by a preponderance of evidence.**

If you win, Judge/Magistrate will issue judgment with a possession date

□ If you lose then start over correcting any mistakes

POST COURT ACTION

If you win and the tenant does not move out, return to Small Claims Court and fill out “A request for a General Execution” within three days or you will have to start over.

Request the clerk to make out a “Writ of Possession” that is sent to the Sheriff.

Next go to the Sheriff’s Department to fill out the “Instructions to the Sheriff to take forcible possession of the dwelling and to physically remove the tenant’s possessions from your property and place them on public property. Pay the Sheriff a deposit (cash or business check) for charges. If the Sheriff is going to provide the labor, the minimum deposit is \$150.00. The amount could be more depending on size of unit.