



IDAHO LAW FOUNDATION  
*presents*

# **Handling Your First or Next Tenant/Landlord Case**

April 16, 2015  
The Law Center  
Boise, Idaho

***Approved by the Idaho State Bar for  
2.0 CLE Credits  
(NAC Approved)***

*Providing programs and services that enhance the competency of  
members of the Bar, is an ongoing Idaho Law Foundation goal.*



IDAHO LAW FOUNDATION

## OUR MISSION

The Idaho Law Foundation supports the right of all people to live in a peaceful community. Our mission is to educate all people about the role of law in a democratic society, to provide opportunities for people to avoid and resolve conflicts, and to enhance the education and competence of lawyers.

## OUR GOALS

Enhancing public understanding of and respect for the law and the legal system.

Providing and improving access to legal services.

Providing programs and services that enhance the competency of members of the bar.

Aiding in the advancement of the administration of justice.

Generating the necessary funding to fulfill the mission and goals of the organization.

Maintain effective administration and management of the Foundation's resources.

## OUR PROGRAMS

- Idaho Volunteer Lawyers Program
- Law Related Education
- Continuing Legal Education
- Interest on Lawyer Trust Account
- Guardian ad Litem

# Agenda

**Registration: 8:30 – 9:00 a.m.**

**Program: 9:00 – 11:00 a.m.**

## *About our Speakers*

**Sunrise A. Ayers  
Idaho Legal Aid Services Inc.  
Boise, Idaho**

**Sunrise Ayers** is an attorney at Idaho Legal Aid Services, Inc. in the Boise Service Office. Sunrise joined Idaho Legal Aid in 2006 upon graduating *cum laude* from Northwestern School of Law of Lewis and Clark College in 2006. In her position at Idaho Legal Aid, Sunrise has staffed the Senior Legal Hotline, done case work in the areas of guardianships, Medicaid, evictions, and foreclosure prevention, and served as project manager for an Identity Theft victim services grant and two Fair Housing outreach and education grants.

Sunrise's primary practice areas include elder law: assisting seniors with Miller Trusts, powers of attorney, wills, and consumer issues; and housing law: providing advice on evictions, foreclosures, and fair housing issues. Sunrise currently serves as the Housing Law Chair at Idaho Legal Aid and co-teaches the Concordia Housing Law Clinic with Jason Dykstra. In addition to her work at Idaho Legal Aid, Ms. Ayers is the Chairperson for the Idaho State Bar Animal Law Section, serves on the Idaho Pro Bono Commission, volunteers on the Board of Directors for Spay Neuter Idaho Pets, and is the mother of two boys.

**David M. Penny  
Cosho Humphrey, LLP  
Boise, Idaho**

**David Penny** is a partner in the law firm of Cosho Humphrey, LLP. He is a graduate of Boise State University and Gonzaga University School of Law. For 29 years, David has represented a variety of clients before the State and Federal Courts of Idaho. His general litigation law practice includes the representation of owners and management companies of commercial and residential properties. David advises clients on managing the landlord-tenant relationship including the drafting of leases, lease enforcement, least termination/eviction, as well as the selling and purchasing of real property. David advises housing providers on Fair Housing compliance and defends housing providers against housing discrimination claims.

*These materials were published in 2015. The law is constantly changing. You are cautioned to use this information as a starting point for your own research and are urged to consult applicable resources to determine the current state of the law.*

# EVICTIION PROCESS IN IDAHO

*Presented by*

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of

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## Idaho Landlord Tenant Act

- Idaho Code §§ 6-301 – 6-324
  - Creates the eviction process
  - Balancing interests of landlords and tenants

## Idaho Manufactured Home Residency Act

- Idaho Code § 55-2001 et seq.
- Home space lease
- Different notice requirements
- Nonpayment of rent
  - 3 Days to cure, 30 days to vacate if no cure
- Rental agreement violations
  - 3 Day to cure, 20 days to vacate if no cure
- Not less than 180 days notice of eminent domain or ceasing operations
- 90 days written notice of intention not to renew lease.

## Commercial Property Lease

- Same procedure under Idaho Landlord Tenant Act
- Special notice provisions
- Special service provisions

## **Two Types of Evictions:**

1. **Summary Proceedings.**
  - ▣ Nonpayment of Rent
  - ▣ Illegal Drugs
2. **Lease Violation Evictions**
  - ▣ Disturbances
  - ▣ Damages
  - ▣ Non Rent Charges

## **The Summary Proceeding**

1. The sole basis of the action must be the non-payment of rent or illegal drugs.
2. The landlord cannot seek a monetary recovery for past due rent, late charges, or damages.
3. The landlord can only seek possession of the leased property and attorney fees and costs.

# Notices Under Idaho Law

- Three Day Notice to Quit for Non-Payment
  
- Three Day Notice to Quit for Material Non-Compliance
  - Notice of Lease Violation

## THREE DAY NOTICE TO QUIT

TO: \_\_\_\_\_  
\_\_\_\_\_

**YOU ARE HEREBY NOTIFIED** under the provisions of Idaho law that you have violated your rental agreement in respect to the premises at \_\_\_\_\_, in that you have failed to pay a total of \$ \_\_\_\_\_, that became dues as follows:

<u>Date of Charge</u>	<u>Type of Charge</u>	<u>Amount Due</u>
_____	_____	_____

TOTAL: \$ \_\_\_\_\_

**YOU ARE FURTHER NOTIFIED** that unless you pay the past due RENT identified above within three (3) days from the date of the service of this Notice upon you, your tenancy will be terminated on that day and you must quit said premises by removing yourself, all other persons and all belongings from the premises, and leaving the premises in an orderly condition with all fixed items installed on the premises. Your failure to comply herewith or to quit said premises will result in immediate legal action in which the Landlord will request a Writ of Restitution against you for possession of the premises, as well as costs and attorney's fees.

**YOU ARE FURTHER NOTIFIED** that, should you vacate the premises, you are still liable for all of the sums due in accordance with the rental agreement. Landlord's acceptance of partial payments either during or after the three (3) day period shall not waive the Landlord's right to proceed with eviction. You are also liable for any damages done to the leased premises.

**YOU ARE FURTHER NOTIFIED** that you have the right to retain counsel to represent you in this matter and the right to defend such action in a court of law. If the Landlord is required to institute legal proceedings because you have failed to pay and/or failed to vacate the premises, the Landlord will seek an award of costs and attorney fees against you. Entry of a decree for eviction may affect your ability to obtain housing in the future.

DATED This \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Manager

## The Three Methods of Service

1. **First method:**

- Actual delivery of a copy of the notice to the tenant personally.

2. **Second method:**

- If the tenant cannot be served personally, service may occur by leaving a copy with a person of suitable age and discretion and sending a copy of the notice through the mail addressed to the tenant at the place of residence.

3. **Third Method:**

- If the tenant cannot be personally served, and there is no one to leave a copy with meeting the above criteria, then service may be obtained by affixing a copy of the notice in a conspicuous place on the property and sending a copy through the mail addressed to the tenant at the subject property.

## Information for the Attorney

□ The Attorney will need:

- A complete copy of the lease;
- The signed Notice to Quit;
- A statement with the date and method for service of the Notice to Quit;
- Anything else the Attorney might need to know.
  - i.e. – tenant has been absent from property
  - i.e. – tenant tried to pay after 3 day notice expired



## Bringing the Case to Trial

1. Idaho Code §6-310(5) requires that once a complaint is filed, the court shall schedule a trial within twelve days;
2. The landlord is required to accomplish service of the summons, which includes the trial setting, and a verified complaint, pursuant to Idaho Code §6-318, on the tenant not less than five days before the trial date.

## The Trial

1. **Tenant Default:**
  - ❑ If tenant fails to attend the trial and the Affidavit of Service shows the tenant was served with the Summons and Complaint not less than five days prior to the trial date, the court will enter judgment for the landlord for restitution of the premises and the costs and attorneys' fees.
2. **Tenant appears for Trial:**
  - ❑ A continuance may be granted by the court up to two days.

## **The Trial, Cont.**

- The landlord, as the plaintiff, must present a case demonstrating that the plaintiff is entitled to possession of the premises. The managing agent will usually testify to establish:
  1. The relevant terms of the lease;
  2. The contents of the notice;
  3. The method of service of the notice; and
  4. The tenant's failure to pay rent in full within the three-day notice period.

## **Tenant Defenses**

- Tenant Must Prove One of the Three Defenses Available:
  1. The tenant has paid or tendered the rent due within the three-day period;
  2. The landlord has failed to comply with the lease requirements and/or law applicable to the Notice of Lease Violations; or
  3. The landlord waived the right to possession of the premises by accepting a late tender of rent.

## **Evictions for other than Non-payment of Rent**

1. The tenant continues in possession of the property after the expiration of the lease, without permission of the landlord;
2. The tenant continues in possession after failure to perform covenants of the lease within the three-day notice period;
3. The tenant continues in possession after breach of a condition or covenant of the lease for which no cure can be made; and
4. The tenant has committed waste upon the premises and a three-day notice to quit has been served upon the tenant.

## **Proceeding to Trial for Evictions for Other than Non-Payment**

- ❑ The landlord must file the verified complaint and have the complaint and summons served upon the tenant;
- ❑ The landlord may sue for possession, unpaid rent, late charges, damages, and attorneys' fees;
- ❑ The tenant has twenty days in which to file an answer to the complaint;
- ❑ The landlord can bring a motion for entry of a default judgment and obtain the relief requested from the court within a relatively short time frame;
- ❑ If the tenant answers the complaint, a trial date is set 90 -120 days after a trial date is requested.

## The Trial

- The issues at trial depend upon the relief requested by the landlord.
- The court will determine:
  1. Which party is entitled to possession of the premises;
  2. Amount of rent due and owing to the landlord;
  3. Any late charges or damages recoverable pursuant to the terms of the lease; and
  4. Which party is entitled to an award of attorney fees and/or costs.

## The Trial, Cont.

- The Tenant May Present a Defense by Proving:
  1. That the tenant did not breach a term of the lease;
  2. That notice was not provided as required by statute;
  3. That the default was timely cured; and
  4. That the eviction action by the landlord is retaliatory.
    - This type of defense will usually arise where the tenant is current on rent payment and has complained about the conditions of the premises or reported *Housing Code* violations.

## **Enforcing the Judgment for Possession**

1. Obtain a Judgment for possession;
2. The Clerk of the Court will issue a Writ of Restitution directing the Sheriff to immediately return possession of the property to you;
3. The Writ of Restitution should be taken to the County Sheriff; and then
4. The Sheriff will require payment of his fees.

## **Summary Lawsuit by Tenant against Landlord**

- Idaho Code §6-320 allows the tenant to file a summary proceeding against the landlord for damages and specific performance for:
  1. Failure to provide reasonable waterproofing and weather protection of the premises;
  2. Failure to maintain in good working order electrical, plumbing, heating, ventilating, cooling, or sanitary facilities supplied by the landlord;
  3. Maintaining the premises in a manner hazardous to the health or safety of the tenant;

## **Summary Lawsuit by Tenant against Landlord, Cont.**

4. Failure to return a security deposit as and when required by law;
  5. Breach of any term or provision of the lease affecting the health and safety of the tenant, whether explicitly or implicitly a part therefore; and
  6. Failure to install approved smoke detectors in each dwelling unit.
- The summary proceeding is only for specific performance/injunctive relief.

## **Requirements for Tenant to File a Summary Proceeding Against Landlord**

- Three Day written notice listing each alleged failure or breach;
- Service of the Three Day notice the same as service by landlord on tenant for Summary Proceeding;
- Landlord must fail to perform or cure the items listed in the Notice;
- Property must be less than 5 acres.

## **Sale and Purchase of Rental Property**

- Contract Provisions:**
  - Assignment
  - Tenant subordination provision
- Tenant Estoppel Certificate:**
  - Reaffirmation of lease
  - No landlord defaults
- Security Deposits:**
  - Accounting