



Commercial Evictions

WHITNY L. NORTON

PISKEL YAHNE KOVARIK, PLLC

Unlawful Detainer

- Forcible Detainer vs. Unlawful Detainer
 - Forcible – taking possession by force or refusing to leave and takes possession from rightful owner
 - Unlawful – when a tenant continues in possession after a default and after notice in writing requiring the tenant to comply or vacate
- Purpose of legislation
- Enacted in 1890
- No self-help
- Special statutory action
 - Summary proceeding to recover possession
 - If the counterclaim would defeat the basis for the action it is allowed otherwise it is not
 - CR 81(a) - RCW 59.12 controls

Bases for Commercial Unlawful Detainer

- RCW 59.12.030 – Bases for Unlawful Detainer
 - Holding over at the end of fixed term (no notice required – see Spokane Airport Board v. Experimental Aircraft Ass’n, 198 Wn.2d 476 (2021));
 - Maintaining possession when in a periodic tenancy (indefinite term) after receiving 20 days notice to quit;
 - Failure to pay or vacate after receiving 3 days’ notice;
 - Failure to cure a breach of the lease (other than failure to pay) after receiving 10 days’ notice;
 - Waste, unlawful business, or nuisance gives rise to a 3 day notice to quit;
 - Trespass gives rise to a 3 day notice to remove themselves;
 - Gang-related activity (RCW 59.18.130 + RCW 59.18.030(12)+(13))

Notices

- RCW 59.12.040
 - Service of Notice
 - Hand delivery;
 - If the tenant is absent, by delivering to another person of suitable age & discretion and by mailing via first class mail;
 - If the tenant or other person can be found by posting the notice in a conspicuous place on the premises unlawfully held and mailing via first class mail
 - *Service by mail adds one day before an action may be commenced (e.g., service by mail makes a 3-day notice a 4-day notice)
 - Proof of Service
 - Affidavit of service just as you would have an affidavit of service from a process server for personal service of a summons and complaint
- Lease
 - Events of Default
 - Cure Periods
 - Notice (if a tenant contracts with a landlord for a longer period than the statutory period the tenant is entitled to the full time)
- Strict compliance with time and manner – Substantial compliance with substance
- Failure to comply with notice requirements defeat's the superior court's jurisdiction over the action
- CR 6 applies – the day of service is not included in the time computation

Contents of Notice

- What should be included in the written notice? The statute doesn't tell us! The notice should:
 - Be dated;
 - Identify the tenant;
 - Identify the landlord;
 - Describe the premises;
 - Describe the grounds for the notice;
 - Identify how the tenant can cure, if applicable;
 - Identify the time to comply or termination date;
 - Explain result of failure to comply; and
 - Be signed.

How to Plead

- RCW 59.12.070 – Requirements of Complaint
 - Must set forth:
 - Facts on which landlord seeks to recover;
 - Describe the premises with reasonable certainty;
 - If based upon a failure to pay – the amount of rent
 - May set forth:
 - Circumstances giving rise to unlawful detainer;
 - Damages or compensation sought
- RCW 59.12.170 – Double damages
- Attorney Fees
- Right to amend to convert into ordinary civil action once issue of possession has been determined

Summons

- RCW 59.12.080 – Specific to Unlawful Detainer
 - Name of the parties;
 - Court in which the proceeding is brought;
 - Nature of the action;
 - Relief sought;
 - Return day (returnable not less than 7 nor more than 30 days from the date of service RCW 59.12.070);
 - Notify the defendant to appear and answer within the time designated

Alternative Service Allowed

- Unlike RCW 59.18, in order to utilize the alternative service method for commercial unlawful detainer an order from the court must first be obtained
- RCW 59.12.085
 - Unable to personally serve
 - Posted in a conspicuous place on the premises unlawfully held
 - Mailed via regular mail and certified mail to defendant's last known address
 - Jurisdiction limited to possession only

Commercial Eviction Summons

Name of the parties;
Court;
Nature of the action;
Relief sought;
Return day; and
Defendant told to answer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

_____,
Plaintiff;

v.

_____,
Defendants.

)
) NO.
)
) **EVICITION SUMMONS**
)
) **(Commercial)**
)
)
)
)
)
)
)
)
)
)
)

**THIS IS NOTICE OF A LAWSUIT TO EVICT YOU.
PLEASE READ IT CAREFULLY.
THE DEADLINE FOR YOUR WRITTEN RESPONSE IS:
5:00 p.m. on _____ 2023.**

TO: The Clerk of Court; and

TO: [DEFENDANT]

FROM: [PLAINTIFF]
c/o Piskel Yahne Kovarik, PLLC
522 W. Riverside Avenue, Suite 700
Spokane, WA 99201

This is a notice of a lawsuit to evict you from the property located at [INSERT ADDRESS]. Your landlord is asking the Court to terminate your tenancy, direct the sheriff to remove you and your belongings from the property, enter a money judgment
EVICITION SUMMONS - 1



Piskel Yahne Kovarik, PLLC
322 W. Riverside Avenue Ste. 700
Spokane, WA 99201
P 509.321.5830 / F 509.321.5835

Default

- RCW 59.12.120
 - If the defendant does not answer the court renders judgment in favor of the plaintiff as prayed for in the complaint

Bond – Counterbond – Indemnity bond

- RCW 59.12.090 – bond for writ of restitution
 - Plaintiff to prosecute the action without delay and pay all costs that may be adjudged to the defendant and all damages which he may sustain by reason of writ having been issued if the writ is wrongfully sued out
- RCW 59.12.100 – stay bond prevents execution of the writ prior to trial
 - Posted by the defendant in an amount determine by the court that the plaintiff may recover for the defendant’s use and occupation of the premises, rent found due, together with all damages the plaintiff may sustain by reason of the defendant maintaining possession of the premises
- RCW 36.28.050 – sheriff’s indemnity bond
 - 2x the amount of the personal property
 - Protects only the sheriff in the event the writ is wrongfully executed upon
 - Must include:
 - Caption with correct spelling;
 - Proper spelling of current sheriff’s name;
 - Proper name of writ;
 - Amount of bond

Defenses to Unlawful Detainer

- Failure to give proper notice
- Failure to properly serve notice
- Excuse for breach

Show Cause

Why should a writ of restitution not issue?

Show cause hearings are summary proceedings to determine the issue of possession pending a lawsuit.

- Mini-trial
- Live testimony (court's discretion)
- Get lease, notices and affidavits of service into evidence
- Prove all pre-filing notices properly served
- Prove tenant failed to abide by notice
- Tenant properly served with summons and complaint

Writ of Restitution

- Documents required by SCSO:
 - Original and two copies of the Writ with the court impression stamp
 - Two copies of the Order issuing the Writ
 - A completed Tenant Information Sheet (PDF). Must have name and telephone number for designee
 - Request for Storage of Personal Property Form (PDF)
 - Sheriff's Indemnity Bond Advance payment to the Sheriff's Office for \$100 plus two mileage
- <https://www.spokanecounty.org/1407/Eviction-Writ-of-Restitution>

Executed by Spokane County Sheriff's Office

Notable Case Law

- Olin v. Goehler, 39 Wn. App. 688 (1985)
- Spokane Airport Board v. Experimental Aircraft Ass'n, 196 Wn.2d 1037 (2021)
- FPA Crescent Associates v. Jamie's LLC, 190 Wn. App. 666 (2015)
- Sprincin King Street Partners v. Sound Conditioning Club, Inc., 84 Wn. App. 56 (1996);
- Brickum Investment Co. v. Vernham Corp., 46 Wn. App. 517 (1987);
- Income Properties Investment Corporation v. Tretethen, 15 Wn. 493 (1930)
- Angelo Property Co., LP v. Hafiz, 167 Wn. App. 789 (2012) review denied 175 Wn.2d 1012 (2012)
- Barr v. Young, 187 Wn. App. 105 (2015)
- Castellon v. Rodriguez, 4 Wn.App.2d 8 (2018)
- Munden v. Hazelrigg, 105 Wn.2d 39 (1985)

Post-Eviction – what do I do with all this stuff?

- Follow the lease provisions
- Give proper notice
- RCW 60.72 - Landlord's lien may apply
- If the tenant voluntarily surrenders possession of its personal property as payment for rent due under the lease then the landlord may enjoy the benefits of a landlord's lien without initiating foreclosure proceedings under RCW chapter 60.10

Questions?