



The 'Dreaded' Procedure

By Keat Foong, Executive Editor

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In August, three people were shot and killed in College Station, Tex. after a law enforcement officer attempted to serve notice to an apartment resident regarding a court date for eviction hearings, according to [theeagle.com](#). The constable was shot dead by the renter, and according to press reports, both the renter and a bystander were killed and others wounded in the ensuing gunfire between law enforcement officers and the renter.

The tragic incident is a reminder of the gravity of evictions. In light of the shooting incident, Anne Sadovsky, award-winning speaker, trainer and consultant, refers to apartment evictions as "this dreaded procedure." That is why apartment companies work hard, whether by diligent screening or rent collection efforts, to minimize their chances of having to initiate evictions. But at what point do they have to initiate, and what specifically should be done?

One of the first things to remember about evictions is "to be 100 percent in tune with the laws and procedures and your legal obligations in your geographic area," advises Sadovsky. "Know that you are filing in the right place and research the JP over your area. The key is developing a good relationship with the courts."

Many apartment companies emphasize the need to file for evictions in a timely manner and as a matter of policy and procedure because delays can be involved at various points in court proceedings. For example, it may take time to schedule a court date. And "renters today have gotten pretty smart about squatters' rights and how to drag out the eviction procedures, making the entire experience difficult and more costly to the housing provider," says Sadovsky.

Dominium, which operates 217 apartment properties totaling some 23,000 units in 20 states, files for eviction with the courts once the rent is late. The filing is made as close to the 10th of the month as possible so that a court date may be set for the same month if possible, explains Jean Ferguson, vice president of property management at Dominion. Three notices are sent to the resident before the company initiates the legal proceedings to schedule a court date.

"The rent is due on the first, and it is late on the second, although there is a grace period of a few days before a late fee is imposed," explains Ferguson. The last notice, sent before the 10th of the month, informs the resident that eviction proceedings will be initiated if the rent owed is not received by a certain date.

"Eviction proceedings have become more complicated, time consuming and costly these past several years," comments Ferguson. If the resident shows an ability to pay the rent in

a given period, it is likely the judge will grant an extension, she says. And judges may have become more empathetic, especially with regards to families with children, in light of the weakening financial situation of the population at large. "We understand that too. This is not what we want to do, but we are obligated by owners to collect rent," says Ferguson. Ferguson says Dominion also attaches a list of emergency rental payment resources and organizations to its late-payment notices.

Of Dominion's evictions cases every month, probably at least half of the residents find ways to make an arrangement to pay the rent before they go to court, says Ferguson. If there are interactions with residents at any stage in connection with evictions, Sadovsky advises, "Be polite but firm. Stay calm. Do not get in a shouting match with the residents." Also, be sure to document every transaction and conversation with the resident, notes Sadovsky.

For The Saywitz Co., a 30-plus-year-old company that owns and manages more than 50 properties across southern California, the policy is to meet with the tenant and understand both their intention and their ability to pay the rent and develop a payment plan, explains President Barry Saywitz. It is very easy to tell which residents are genuinely interested in crafting a payment plan, he notes. "Residents who care about their credit will want a conversation with you," he says. "Those who aren't concerned will not return your messages."

The apartment company will then initiate legal action against residents who seem not capable of or interested in fulfilling their rent obligations. "Residents who don't care—you have to obtain a judgment against them," says Saywitz. "And we try to collect on the judgment, and if unable to do so, we turn the account to a collections agency." The apartment company will file two lawsuits, one for possession of the unit and the other for financial damages. "People who care about their credit will not want to have two lawsuits on their records," he adds. Once legal action is taken, many of the residents will likely meet with the apartment company to try to come to an agreement, Saywitz agrees.

If the case goes to court and a court order for the resident to vacate the premises is obtained, only in a very small percentage of cases does the resident refuse to leave and does it become necessary to obtain a writ to have the sheriff physically evict the resident from the premises, says Ferguson. Nevertheless, according to Saywitz, eviction court cases can take two to three months in California jurisdictions. For this reason, The Saywitz Co. sometimes prefers to provide a financial incentive for the resident to leave. Often, these residents may be in need of cash, and it may be worthwhile for the property manager to pay them to leave more quickly, says Saywitz. In exchange for the cash, the resident may be obligated to leave within 24 hours, as well as sign a release and return the keys.

One tricky issue to watch for: In many jurisdictions, once a property owner accepts rent while the court proceedings are in process, the eviction will have to be filed again. "Once you have filed, do not accept rent," says Sadovsky. Indeed, property managers may want to try to make sure the lease language allows them to accept partial payment and still be able to bring eviction action, says Ferguson. There is also the thorny question of roommates who are not subject to the lease who take advantage of squatters' rights. "Make sure you state that the eviction applies to all occupants, whether lease holders or not," says Sadovsky. Saywitz says the resident can be told that they will be held legally and financially liable for the roommate, or these roommates may be similarly given a financial incentive to vacate the premises.

As for collections, it is up for debate whether the account should be passed to a collections agency. Rather than contract with collections agencies, Dominion employs its own

collections department, says Ferguson, as the company has found that the recovery rate via collections agencies is poor. This in-house department, staffed by two employees, achieves a recovery rate of 25 percent of what is owed—bad debt for the company is impressively less than half a percent of revenues. “Make every effort to collect without a collection agency,” agrees Sadovsky.

Where evictions and collections are concerned, treating residents with respect, whatever the circumstances, may be an important reminder for the property manager. “They are less happy about being evicted than you are for having to do it,” says Sadovsky.