



Life of a Louisiana Eviction Case

Governing articles for eviction summary proceedings: Louisiana Code of Civil Procedure, Book 7, Code Title 11, Articles 4701-4736 and La. CCP articles 2591-2596; Lease obligation articles are found in Louisiana Civil Code, Book 3, Code Title 9 “Leases,” Articles 2668-2777

Note: Time periods less than 7 days exclude weekends and holidays. La. CCP 5059

1. Notice to Vacate (NTV):

Landlord begins the process by issuing NTV. There are different types of NTVs depending on type of lease, specific lease provision, or subsidy program participation. Required time periods for NTVs vary.

a. Notice of Termination; Form;

- i. Default rule for a residential lease: the notice of termination shall be in writing. See La. CCP Arts. 2729 and 4701
- ii. In all cases, surrender of possession to the lessor at the time at which notice of termination shall be given under Article 2728 shall constitute notice of termination by the lessee. La. CCP Art. 2729

b. For-Cause NTVs (alleged violation, expiration, or non-payment of rent):

- i. Default rule/no additional subsidy rules:
 1. 5-day written NTV is required per La. CCP 4701
 2. This particular (art 4701) 5-day NTV may be waived in a written lease; (distinguish from non-waivable notice for non-renewal in La. CC 2727-28)
 3. Even if not a lessee, an occupant still receives a 5 day written NTV. La. CCP 4702
 4. Lease may require other controlling periods of time for notice; may be longer
 5. Lease may have cure-clause or cease-and-desist language that requires a *separate notice prior* to the NTV

c. Non-Renewal or No-Cause NTVs:

- i. Waivable?:
 1. NTVs for non-renewal for indeterminate-termed leases are NOT waivable. See La. CC arts. 2727-2729; distinguish from La. CCP 4701, which explicitly states notice is waivable
 2. A lease with a fixed-term terminates upon the expiration of that term, without need of notice, unless the lease is reconducted La. Civ. Code art. 2720;

However, if lease was not reconducted (ie, TT didn't remain for 7 days after initial term ended), NTV may still be required for non-renewal per the lease (check lease for a renewal clause) and/or notice per CCP 4701, if notice was not waived (check lease for 4701 waiver)

ii. Term of Lease/Reconduction of Lease:

1. Is the lease term fixed/determinate or indeterminate?

dd. Determinate/fixed-term per the lease (typically 1 year or month to month)

ee. If LL & TT did not originally agree to a fixed-term (specific end-date), the term of the lease is month to month. La. CC arts. 2678, 2680

2. If no NTV is given at the end of fixed-term lease AND if the lessee remains in possession for 7 days after expiration of the definite term, a lease is reconducted. La. CC 2721

dd. The new term is month to month. La. CC 2723

ee. All provisions of the lease continue with the new term. La. CC 2724

iii. Time Period for Notice:

1. Cannot terminate a lease before the end of a fixed-term lease unless lease has explicit reservation of right to terminate. La. CC 2718. If right reserved, must give the notice specified in the lease contract or the notice provided in Articles 2727 through 2729, whichever period is longer; not waivable. La. CC 2718

2. For a lease with a month to month term, a written NTV must be given 10 calendar days before the end of that month to terminate the lease. La. CC 2727-28

3. For a week-long (but less than a month) term, must be given 5 calendar days before the end of that period. La. CC 2727-28

4. Check lease or applicable program rules to see if longer period of time controls

iv. Delivery of notice: Tacking on door ok *if* the whereabouts unknown. La. CCP 4703; check lease for additional delivery requirements, such as certified mail

d. Special NTVs for Subsidies:

i. Nonpayment evictions from public housing or Section 8 Project-Based Rental Assistance require 30 day NTV -- 24 CFR §§ 247.4; 880.607; 882.511; 884.216; 966.8.

ii. HOME Investments Partnership Program require 30 day NTV- 24 CFR 92.253(c)

iii. State law minimum notice cannot be waived for Section 8 Housing Choice Voucher Program participants. 24 CFR § 982.310(e).

- iv. Other period of time: Check lease and applicable program rules
- e. Subsidy-Specific Pre-Eviction Administrative Process Prior to NTV Required?:
Participation in certain subsidy-programs require an additional process prior to the issuance of NTVs or an eviction hearing
 - i. Public Housing: Grievance process – 24 CFR 966.54; 966.56.
 - ii. Section 8 Project-Based Rental Assistance (PBRA): Meeting to discuss termination – HUD Form Lease and HUD Occupancy Handbook 4350.3.
 - iii. Check individual subsidy regulations and applicable guidance
- f. NTV Required for Abandonment?:
 - i. NTV is required; however, if LL reasonably believes the premises has been abandoned, they may take possession without further judicial action. “Indicia of abandonment include a cessation of business activity or residential occupancy, returning keys to the premises, **and** removal of equipment, furnishings, or other movables from the premises.” La. CCP 4731
 - ii. Federally-declared natural disasters: cessation of residential occupancy shall not be deemed evidence of abandonment for thirty days following the initial. La. CCP 4731(C)

2. RFP: Landlord applies for Rule for Possession with Appropriate Court/JOP

- a. The RFP is a rule to show cause. La. CCP 4731
- b. The RFP may be heard in a summary proceeding. La. CCP 4731
- c. The RFP must state the grounds upon which eviction is sought. La. CCP 4731
- d. Justices of the Peace (JOPs) may hear eviction cases. La. C.C.P. Art. 4911-12; La. R.S. § 13:2586
- e. RFP is limited to issue of possession of premises
 - i. Nothing in this Title (Evictions) shall be construed to deprive any lessor of any remedy heretofore allowed him either for the payment of rent due to him or for the seizure of any furniture found on the leased premises; and nothing in this Title shall be construed to conflict with the provisions of Articles 3651 through 3664. (La. C.C.P. Art. 4705); Damages are not recoverable in a summary proceeding. *Major v. Hall*, 263 So.2d 22, 24 (La. 1972)
- f. Proper venue for RFPs in JOPs, City, Parish, and District Courts:
 - i. Amount in dispute; eviction proceedings (La. C.C.P. art 4844)
 - 1. Jurisdiction in parish or city courts for evictions suits when:
 - a) When the lease is by the day and the daily rental is one hundred fifty dollars or less.
 - b) When the lease is by the week and the weekly rental is five hundred dollars or less.

- c) When the lease is by the month and the monthly rental is three thousand dollars or less.
- d) When the lease is by the year and the annual rental is thirty-six thousand dollars or less.
- e) When the suit is to evict an occupant as defined by Article 4704, if the annual value of the right of occupancy does not exceed the amount in dispute to which the jurisdiction of the court is limited by Articles 4842 and 4843 or as to the amounts set forth in Subparagraphs (3) and (4) of this Paragraph.
- f) In computing the jurisdictional amount for purposes of eviction suits, the daily, weekly, monthly, annual, or other rental provided by the lease, exclusive of interest, penalties, or attorney fees, shall determine the amount in dispute.

3. Trial on Rule for Possession- City Court:

- a. Trial cannot be heard less than 3 days after service of Rule for Possession. La. CCP 4732
- b. Although TT must show cause why they should not be evicted, still LL's burden to prove by a preponderance of the evidence that an eviction is warranted
- c. Unless specifically limited by the law, the rules governing ordinary proceedings apply to the trial. La. CCP 4731; 2591-2596
- d. City and district courts are courts of record and the rules of evidence apply. Continuances, subpoenas, depositions, discovery and interrogatories are allowed.
- e. Regular order of trial exists. TT may offer defenses, including exceptions and answers. If exceptions presented; exceptions to be argued prior to answers (trial on merits not warranted if exceptions granted)
- f. Defenses may be made orally but a written answer required for suspensive appeal (different for JOP hearings)
- g. Circumstances justifying involuntary dismissal:
 - i. Plaintiff fails to appear. La. Code Civ. P. art. 1672(A)(1)
 - ii. "Upon the facts and law, the plaintiff has shown no right to relief." La. Code Civ. P. art. 1672(A)(1)

4. Trial on Rule for Possession- Justice of the Peace Court:

- a. Trial cannot be heard less than 3 days after service of Rule for Possession. La. CCP 4732
- b. Although TT must show cause why they should not be evicted, still LL's burden to prove by a preponderance of the evidence that an eviction is warranted
- c. Regular order of trial exists. TT may offer defenses, including exceptions and answers. If exceptions presented; exceptions to be argued prior to answers (trial on merits not warranted if exceptions granted)
- d. Oral pleadings are permitted. No written pleadings are required. La. Code Civ. P. art. 4917.
- e. Record is limited. La. Code Civ. P. art. 4918.

- f. Rules of evidence are relaxed. La. Code Civ. P. art. 4921.2.
- g. No discovery without leave of court. La. Code Civ. P. art. 4921.2.
- h. No written answer should be required for suspensive appeal. *Auguillard v. Strauss*, 2015 CW 1241 (La. App. 1 Cir 8/14/15), 2015 La. App. LEXIS 1572, *rehearing denied* (La. App. 1 Cir 4/9/15), 2015 La. App. LEXIS 1642; *Lakewood Palms, LLC v. Myoshia Jennings*, 22-C-259 (La. App. 5th Cir. 6/20/2022) (citing *Auguillard*).
- i. Circumstances justifying involuntary dismissal:
 - i. Plaintiff fails to appear. La. Code Civ. P. art. 1672(A)(1)
 - ii. “Upon the facts and law, the plaintiff has shown no right to relief.” La. Code Civ. P. art. 1672(A)(1)

5. Trial Result: Types of Judgments Issued – La. CCP 4732:

- a. Judgment of Possession, in favor of the Landlord
 - i. Judgment of eviction “shall be effective for not less than ninety days.” La. CCP 4732
- b. Dismissal, in favor of the Tenant
- c. Consent Judgment – parties come to an agreement, such as for more time to vacate or for a payment plan with an agreement to remain
 - i. In an action involving judicial dissolution, the obligor who failed to perform may be granted, according to the circumstances, an additional time to perform. La. Civ. Code art. 2013

6. Warrant for Possession (or Writ of Ejection) -- La. CCP 4733:

- a. If after judgment of possession is granted and TT remains in premises, LL may apply with Constable 24 hours after rendition of judgment

7. Execution of Judgment -- La. CCP 4733-4734:

- a. If a warrant is issued, the court will have the “sheriff, constable, or marshal to deliver possession of the premises to the lessor or owner.” La. CCP 4733
- b. No additional notice to the tenant is required after the warrant is signed.
- c. In addition to the Constable, the warrant must be executed “in the presence of two witnesses, by clearing the premises of any property therein, in order to put the lessor or owner in possession of the premises.” La. CCP 4734
- d. If the premises is locked or barred, the constable can break-in to allow entry. La. CCP 4734

8. Post-Judgment Remedies:

a. City Court Evictions

- i. Motion for New Trial La. CCP 1972 and 1973
 - 1. Filed in the same court
 - 2. 7 days exclusive of holidays – La. CCP 1974
- ii. Appeal

1. An appeal does not suspend execution of a judgment of eviction unless the defendant has answered the rule under oath, pleading an affirmative defense entitling him to retain possession of the premises, and the appeal has been applied for and the appeal bond filed within twenty-four hours after the rendition of the judgment of eviction. The amount of the suspensive appeal bond shall be determined by the court in an amount sufficient to protect the appellee against all such damage as he may sustain as a result of the appeal. La. C.C.P. art. 4735
2. Motion filed in same court; appeal will be taken to Court of Appeal
3. Requires a bond
4. Suspensive Appeal: must be filed in 24 hours of rendition of judgment; requires a sworn written answer with affirmative defense to be filed prior to judgment – La. CCP 4735
5. Devolutive Appeal: must be filed in 10 days – La. CCP 5001

b. Justice of the Peace Evictions – La. CCP 4925

- i. Motion for New Trial La. CCP 1972 and 1973
 1. Filed in the same court
 2. 7 days exclusive of holidays – La. CCP 1974
- ii. Petition for **trial *de novo*** (“TDNs”)
 1. Filed in parish or district court
 2. 15 days from date of judgment or service of judgment when applicable
 3. As a practical matter and to avoid issues, file TDN asking for stay of execution within 24 hours