

Landlord-Tenant Laws in Iowa: Building an Understanding of Home- and Community-Based Settings Rules

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Background HCBS Settings Requirements



- The final HCBS regulations (known as the “Final Rule”) were published in the Federal Register on **January 16, 2014** and became effective **March 14, 2017**.
- Designed to enhance the quality of HCBS, provide additional protections, and ensure full access to the benefits of community living.
- States - Statewide Transition Plan (STP)
 - for existing 1915(c) and 1915(i) programs.
 - Describes the state’s process for ensuring compliance with HCBS setting requirements.
- States were required to be in full compliance by **March 17 2023**.

HCBS Settings Key Concepts:

Are integrated in and supports access to the greater community

Provide opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources

Ensure the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS

Are selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting

Ensure an individual's rights of privacy, respect, and freedom from coercion and restraint

Optimize individual initiative, autonomy, and independence in making life choices

Facilitate individual choice regarding services and supports and who provides them

HCBS Settings Key Concepts: Distinguishing Between Settings

Settings that are not HCB

- Nursing Facilities
- Institution for Mental Diseases (IMD)
- Intermediate care facility for individuals with I/DD (ICF/IID)
- Hospitals

Settings presumed not to be HCB

- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on grounds of, or adjacent to, a public institution
- Settings with the effect of isolating individuals

Settings that could meet rule with modifications

- HCB but do not meet specific requirements in the final rule.
- May require modifications at an organizational level, and/or modifications to the PCP
- Required to engage in remediation plan and complete all necessary actions by July 2020

Settings presumed to be HCB and meet the rule without any changes required

- Individually-owned homes
- Individualized supported employment
- Individualized community day activities

HCBS Settings Key Concepts: Provider Owned and Controlled

A residential setting that is provider-owned or controlled is subject to additional requirements.

- Defined as a setting where the provider:
 - Owns the property where the member resides,
 - Leases the property from a third party
 - Has a direct or indirect financial relationship with the property owner that impacts either the care provided to or the financial conditions applicable to the member
 - Where a provider has a vested interest in the setting.
- Additional requirements relate to ensuring tenant protections, privacy, and autonomy for individuals receiving HCBS who do not reside in their own private (or family) home.



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Iowa Residential Landlord-Tenant Training

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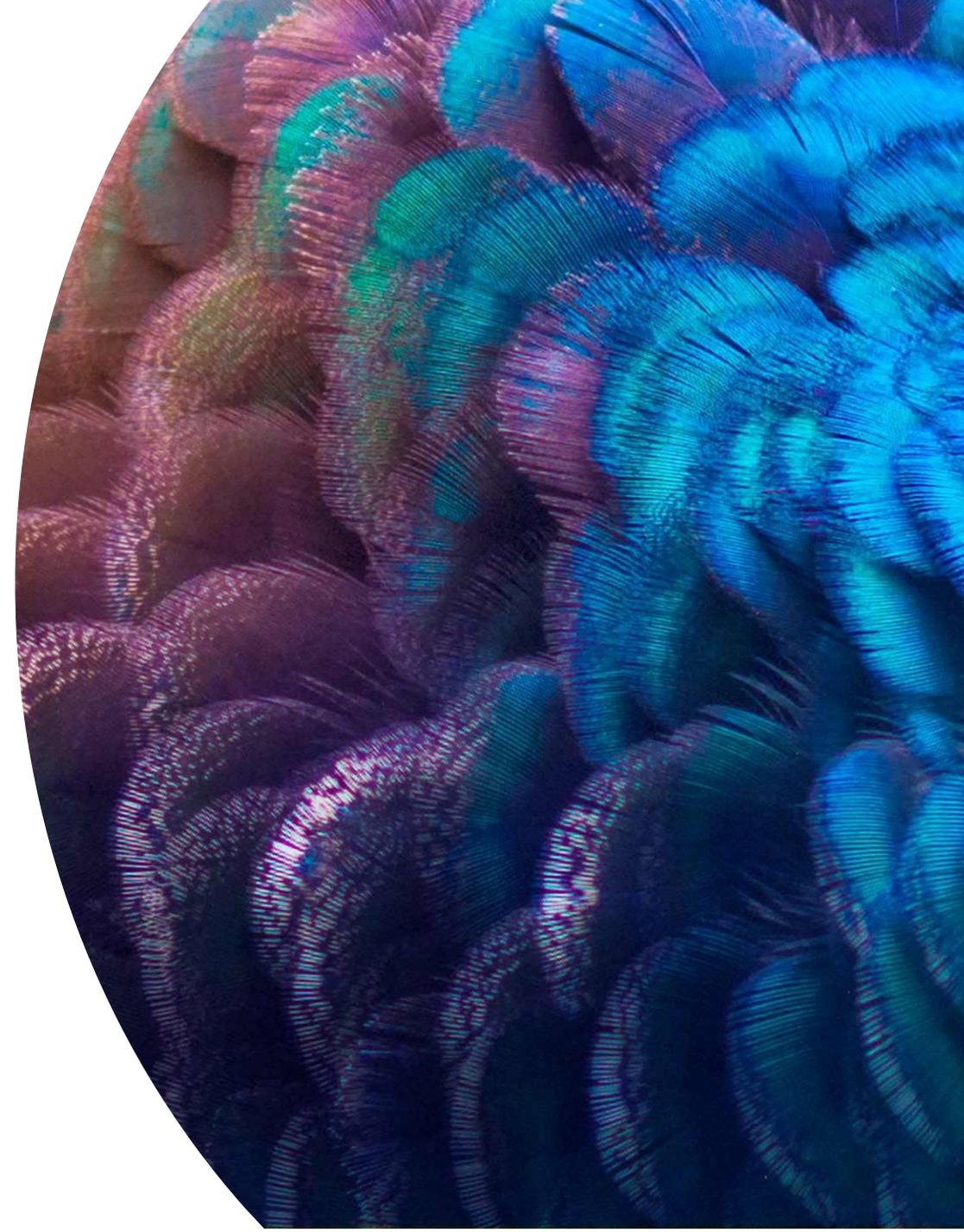
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Roadmap

Scope of Today's Presentation

Overview of Iowa's Residential Landlord-Tenant Law

Examples

Q&A

HCBS Settings Rule

Establishes minimum standards to ensure that Medicaid HCBS consumers live in settings that are truly non-institutional

Rule ensures that residents of HCBS settings have same access to community as other community-dwelling older adults not receiving HCBS

HCBS and Evictions

You need to understand Iowa's Residential Landlord-Tenant laws

HCBS consumers are afforded the same protections as any other tenant under Iowa law

- "... and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity."
- 42 C.F.R. § 441.301(c)(4)(vi)(A).

Applicable Iowa Code Sections Landlord-Tenant Law

Chapter 562A – Uniform
Residential Landlord and
Tenant Law

Chapter 562B –
Manufactured Home
Communities or Mobile
Home Parks Residential
Landlord and Tenant Law

Chapter 648 – Forcible
Entry and Detainer
("FED")

Landlord-Tenant Matters



Evictions a/k/a
FED

Fair Housing
and Civil Rights
Complaints

Compliance
Issues

Lease
Agreements,
Addendums,
and Notice
Drafting and
Review

Forcible Entry and Detainer

Getting Started

Identify the legal issue and related notice:

- Failure to pay rent
- Material noncompliance
- Clear and present danger
- Termination of the lease agreement



Failure to Pay Rent

The Basics

- Tenant is entitled to a 3-Day Notice to Cure
 - 3/30 Day Notice if property is a CARES Act Dwelling
- Notice should only demand outstanding rent for that month, not past due amounts
- Make sure you calculate the cure period properly
 - You are required to accept rent during the cure period, if full amount
- Service

Failure to Pay Rent The Notice

NOTICE OF NON-PAYMENT OF RENT AND TERMINATION OF TENANCY

From: _____ (“Landlord”)

To: _____ (“Tenant” or “you”)

And All Persons Holding Under You Or In Possession of the Property.

Pursuant to Iowa Code § 562A.27 and/or § 562B.25 and your Rental Agreement, you are hereby notified that you have failed to pay rent due in the amount of \$ _____ for the month of _____, 20__ for the lease of the property (“Property”) located at:

You must pay Landlord the above-noted rental amount within three (3) days from the service¹ of this Notice, or otherwise, your Rental Agreement for the lease of the Property will terminate at that time. If you remain in possession of the Property on or subsequent to the termination date, Landlord may enforce the termination by instituting legal action against you and each of you.

THIS WRITTEN NOTICE WILL REMAIN IN FORCE UNLESS EXPRESSLY WITHDRAWN IN WRITING. YOU MAY NOT RELY ON ANY VERBAL COMMUNICATIONS CONCERNING IT. PLEASE TAKE NOTICE AND GOVERN YOURSELF ACCORDINGLY.

Date: _____

Landlord: _____

By (Sign): _____

Print Name: _____

Print Title: _____

Notice was provided by Landlord to Tenant on the above noted date via the following method:

- Via Private Process Server (See Proof of Service for service date)
- Via Hand-Delivery Evidenced by Acknowledgement *(Tenant must acknowledge receipt by signing and dating notice)*
- Via (1) US Mail, (2) Certified Mail, **and** (3) Posted on Front Door.²

¹ If this Notice was served by US/regular mail, certified mail, and posting on the primary entrance of the Property, then this Notice is deemed served, completed and received four days after the Notice is postmarked and deposited in the mail.

² See Footnote 1.

Failure to Pay Rent

Pre-hearing Checklist

- 3-Day Notice to Cure
- Service
- Calculation of Cure Period
- Confirm if payment is made/if tenant has vacated
- File FED Petition

Hearing Checklist

- Exhibit A – Notice to Cure
- Exhibit B – Proof of Service of Notice
- Exhibit C – Proof of Service of Petition and Original Notice
- CARES Act Verification Form

Common Non-Payment Mistakes

Incorrect amount demanded

Acceptance of partial payment or payment after cure period

30-day peaceable possession

Material Non-Compliance

The Basics

- Tenant is entitled to a 7-Day Notice to Cure
- Notice should be specific and provide details as to how tenant has failed to comply with the lease, Iowa law, or ordinances
- Make sure you calculate the cure period properly
 - Document the issue before, during, and after cure period
- Tenant is owed 3-Day Notice to Quit before eviction is filed
- Service

Material Non-Compliance The Notice

NOTICE OF VIOLATION AND TERMINATION OF TENANCY

From: _____ (“Landlord”)

To: _____ (“Tenant” or “you”)

And All Persons Holding Under You Or In Possession of the Property.

Pursuant to Iowa Code § 562A.27(1), you are hereby notified that you have seven (7) days from the service¹ of this Notice to remedy your material noncompliance with your Rental Agreement with Landlord. Specifically, Landlord states you are in material noncompliance with the Rental Agreement as follows:

If you fail to remedy the material noncompliance by correcting the matters set forth above within seven (7) days from the service of this Notice (*see FN 1*), then your Rental Agreement for the lease of the property ("Property") located at:

will terminate at that time. If you remain in possession of the Property on or subsequent to the termination date, Landlord may enforce the termination by instituting legal action against you and each of you.

Note: If you have also been served a Three-Day Notice of Non-Payment of Rent, please be advised that curing under one Notice will not cure your default under any other Notice.

THIS WRITTEN NOTICE WILL REMAIN IN FORCE UNLESS EXPRESSLY WITHDRAWN IN WRITING. YOU MAY NOT RELY ON ANY VERBAL COMMUNICATIONS CONCERNING IT. PLEASE TAKE NOTICE AND GOVERN YOURSELF ACCORDINGLY.

Dated: _____

Landlord: _____

By (Sign): _____

Print Name: _____

Print Title: _____

Notice was served by the following method:

- Via Private Process Server (See Proof of Service for service date)
- Via Hand-Delivery Evidenced by Acknowledgement *(Tenant must acknowledge receipt by signing and dating notice)*
- Via (1) US Mail, (2) Certified Mail, **and** (3) Posted on Front Door, on the following date: _____

¹If this Notice was served by certified mail, regular mail and posting on the primary entrance of the Property, then notice is deemed served, completed and received four days after the notice is postmarked and deposited in the mail.

Three-Day Notice to Quit

3-DAY NOTICE TO QUIT

From: _____ (“Landlord”)

To: _____ (“Tenant” or “you”)

And All Persons Holding Under You Or In Possession of the Property.

Each of you are hereby notified that Landlord now demands that you vacate and surrender to Landlord within three (3) days from the service¹ of this Notice, the possession of the property located at _____ (“Property”) for the reason that your right of possession of the Property has been terminated pursuant to the previously served Notice of Non-Renewal, and thus, you are now a tenant holding over unlawfully.

If you fail to comply with this notice in a timely manner, legal proceedings may be initiated.

THIS WRITTEN NOTICE WILL REMAIN IN FORCE UNLESS EXPRESSLY WITHDRAWN IN WRITING. YOU MAY NOT RELY ON ANY VERBAL COMMUNICATIONS CONCERNING IT. PLEASE TAKE NOTICE AND GOVERN YOURSELF ACCORDINGLY.

Dated: _____

Landlord: _____

By (Sign): _____

Print Name: _____

Print Title: _____

Material Non-Compliance



Pre-hearing Checklist

- Pre-Notice Fact Gathering
- 7-Day Notice to Cure/Service
- Calculation of cure period
- Confirm compliance
- Post-Notice Fact Gathering
- 3-Day Notice to Quit/Service
- File FED Petition



Hearing Checklist

- Exhibit A – Notice to Cure
- Exhibit B – Proof of Service of Notice
- Exhibit C – Evidence of noncompliance/failure to cure
- Exhibit D – Proof of Notice to Quit
- Exhibit E – Proof of Service of Petition/Original Notice
- Exhibit F – Lease (if needed)

Common Non-Compliance Mistakes

Failure to Serve
Notice to Quit

No evidence to
demonstrate non-
compliance

30-day peaceable
possession

Clear and Present Danger

The Basics

- Tenant is entitled to a 3-Day Notice to Quit (no cure period)
- Notice should be specific as to what the basis is for the notice
- Clear and Present Danger must occur within 1000 feet of property
- Tenant has the ability to assert a number of defenses that must be listed on the notice
- Service

Clear and Present Danger The Notice

NOTICE OF TERMINATION OF TENANCY AND NOTICE TO QUIT
(On Basis of Clear and Present Danger)

From: _____ (“Landlord”)

To: _____ (“Tenant” or “you”)

And All Persons Holding Under You Or In Possession of the Property.

Pursuant to Iowa Code § 562A.27A and/or § 562B.25A, you are hereby notified that your lease is terminated as of the three (3) days after the service¹ of this Notice (the “Termination Date”), and it is demanded that you vacate and surrender possession of the property located at the below address (the “Property”) on or before the Termination Date.

This Notice of Termination and Notice to Quit is being given to you for the reason that you or persons on the premises with your consent have created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the Landlord, the Landlord’s employee or agent, or other persons on or within one thousand (1,000) feet of the Landlord’s Property. This clear and present danger includes, but is not limited to, the following activities²:



Pursuant to Iowa Code § 562A.27A and/or § 562B.25A, you are hereby notified that your lease is terminated as of the three (3) days after the service¹ of this Notice (the "Termination Date"), and it is demanded that you vacate and surrender possession of the property located at the below address (the "Property") on or before the Termination Date.

This Notice of Termination and Notice to Quit is being given to you for the reason that you or persons on the premises with your consent have created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the Landlord, the Landlord's employee or agent, or other persons on or within one thousand (1,000) feet of the Landlord's Property. This clear and present danger includes, but is not limited to, the following activities²:

If you remain in the Property after the Termination Date, the Landlord may seek to enforce the termination by bringing a judicial action, at which time you may present a defense.

Note: If you have also been served a Three-Day Notice to Cure for Non-Payment of Rent, please be advised that curing that Notice will not cure this Notice.

THIS WRITTEN NOTICE WILL REMAIN IN FORCE UNLESS EXPRESSLY WITHDRAWN IN WRITING. YOU MAY NOT RELY ON ANY VERBAL COMMUNICATIONS CONCERNING IT. PLEASE TAKE NOTICE AND GOVERN YOURSELF ACCORDINGLY.

¹If this Notice was served by certified mail, regular mail and posting on the primary entrance of the Property, then notice is deemed served, completed and received four days after the notice is postmarked and deposited in the mail.

² Iowa Code § 562A.27A and/or § 562B.25A do not apply to a tenant if the activities causing the clear and present danger are conducted by a person on the premises other than the tenant and the tenant takes at least one of the following measures against the person conducting the activities: (1) The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 235F, 236, 598, 664A, or 915, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger; (2) The tenant reports the activities causing the clear and present danger to a law enforcement agency or the county attorney in an effort to initiate a criminal action against the person conducting the activities; or, (3) The tenant writes a letter to the person conducting the activities causing the clear and present danger, telling the person not to return to the premises and that a return to the premises may result in a trespass or other action against the person, and the tenant sends a copy of the letter to a law enforcement agency whose jurisdiction includes the premises. If the tenant has previously written a letter to the person as provided in this subparagraph, without taking an action specified in subparagraph (1) or (2) or filing a trespass or other action, and the person to whom the letter was sent conducts further activities causing a clear and present danger, the tenant must take one of the actions specified in subparagraph (1) or (2) to be exempt from proceedings pursuant to subsection 1. However, in order to fall within the exemptions provided within this subsection, the tenant must provide written proof to the landlord, prior to the commencement of a suit against the tenant, that the tenant has taken one of the measures specified in paragraphs (1) through (3) above.

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Clear and Present Danger

Pre-hearing Checklist

 Pre-Notice Fact Gathering

 3-Day Notice to Vacate

 Service

 Calculation of period to vacate

 Confirm if tenant vacated

 File FED Petition

Hearing Checklist

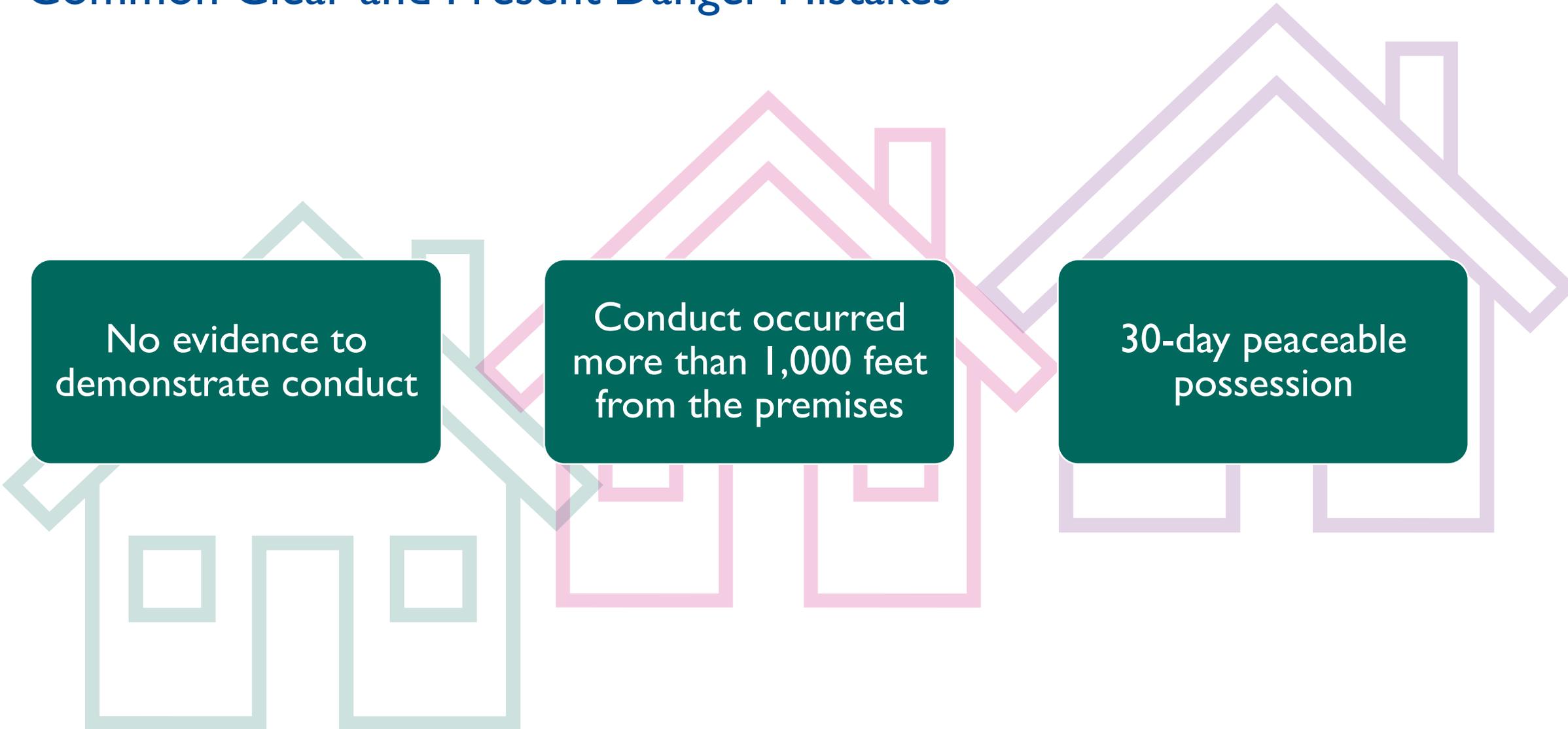
▪ Exhibit A – Notice to Quit

▪ Exhibit B – Proof of Service of Notice

▪ Exhibit C – Evidence of Conduct

▪ Exhibit D – Proof of Service of
Petition/Original Notice

Common Clear and Present Danger Mistakes



No evidence to demonstrate conduct

Conduct occurred more than 1,000 feet from the premises

30-day peaceable possession

Lease Non-Renewal

The Basics

- Tenant is entitled to a 30-Day Notice of Non-Renewal
 - Cannot be before initial lease term is up
 - Calculating this notice period is trickier than it seems
- Tenant is entitled to 3-Day Notice to Quit if they fail to move out
- Service

Lease Non-Renewal Examples

- Must be 30 days prior to the periodic rental date
- Example:
 - Rent is due on the first of each month. Landlord sends notice of nonrenewal on April 25. Lease will terminate on May 31 – 30 days after May 1, which is the next time rent is due
- Example:
 - Rent is due on the first of each month. Landlord sends notice of nonrenewal on April 2. Lease will still terminate on May 31 – 30 days after May 1, which is the next time rent is due

Notice of Non-Renewal The Notice

NOTICE OF LEASE NONRENEWAL AND CANCELLATION

(for leases governed by Iowa Code Chapter 562A)

From: _____ (“Landlord”)

To: _____ (“Tenant” or “you”)

And All Persons Holding Under You Or In Possession of the Property.

Pursuant to Iowa Code § 562A.34, notice is hereby given that your existing Rental Agreement and your tenancy regarding the property (“Property”) located at:

will not be renewed, is cancelled, and shall terminate as of ____ (insert date that is at least 30 days after the date of service¹ of this notice and at or after the end of the term of the Rental Agreement).²

Please make arrangements to vacate the Property in a timely fashion.

Note: If you have also been served a Three-Day Notice of Non-Payment of Rent, please be advised that curing under one Notice will not cure your default under any other Notice.

THIS WRITTEN NOTICE WILL REMAIN IN FORCE UNLESS EXPRESSLY WITHDRAWN IN WRITING. YOU MAY NOT RELY ON ANY VERBAL COMMUNICATIONS CONCERNING IT. PLEASE TAKE NOTICE AND GOVERN YOURSELF ACCORDINGLY.

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Termination/Non-Renewal



Pre-hearing Checklist

- 30-Day Notice of Termination
- Service
- Calculation of period to vacate
- Confirm if tenant vacated
- 3-Day Notice to Quit (if needed)
- File FED Petition



Hearing Checklist

- Exhibit A – Notice of Termination
- Exhibit B – Proof of Service of Notice
- Exhibit C – Notice to Quit
- Exhibit D – Proof of Service
- Exhibit E - Proof of Service of Petition/Original Notice

Common Non-Renewal Mistakes

Miscalculation of notice
period

30-day peaceable
possession

Retaliation

Service Rules for Notices



Mailing (by regular and certified mail) and Posting



Service by Acceptance



Personal Service

Service Rules for Petition/Original Notice

Sheriff or private
process server



Personal service

After two attempts –
mailing (by regular
and certified mail)
and posting

Must occur not less
than three days prior
to the hearing



FED Hearing – What to Expect

Mediation and FED Stipulations

- Have control, can be used to reach goal if you have a notice/service issue
- Select a payment schedule or move-out date
- Continuance in case of default

Default

- Exhibits must still be filed for court to confirm it has jurisdiction

Trial

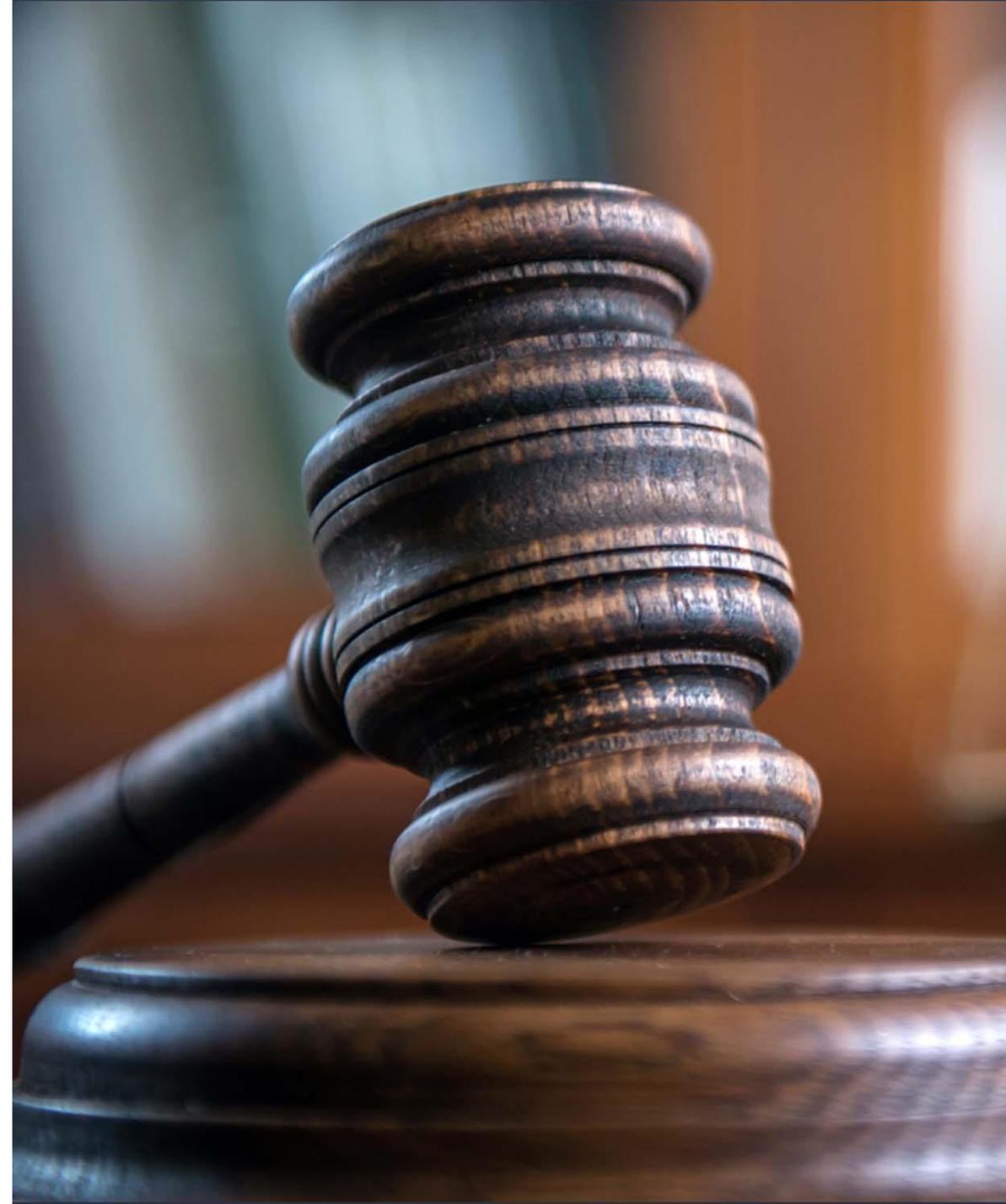


Post-Hearing

Execution of writ of possession

Discuss security deposit matters with client

Assess if small claims money judgment is needed



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Thank You!

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