

House File 2434 - Introduced

HOUSE FILE 2434
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 693)

A BILL FOR

1 An Act relating to the service of notice requirements for
2 landlords and tenants and the service of notice requirements
3 in an action for forcible entry and detainer and including
4 effective date provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 562A.8, Code 2009, is amended by striking
2 the section and inserting in lieu thereof the following:

3 **562A.8 Notice.**

4 1. Notices required under this chapter, except those
5 notices identified in section 562A.29A, shall be served as
6 follows:

7 a. A landlord shall serve notice on a tenant by one or more
8 of the following methods:

9 (1) Hand delivery to the tenant.

10 (2) Delivery evidenced by an acknowledgment of delivery
11 that is signed and dated by a resident of the dwelling unit
12 who is at least eighteen years of age. Delivery under this
13 subparagraph shall be deemed to provide notice to all tenants
14 of the dwelling unit.

15 (3) Personal service pursuant to rule of civil procedure
16 1.305, Iowa court rules, for the personal service of original
17 notice.

18 (4) Mailing by both regular mail and certified mail, as
19 defined in section 618.15, to the address of the dwelling unit
20 or to an address provided by the tenant for mailing.

21 (5) Posting on the primary entrance door of the dwelling
22 unit. A notice posted according to this subparagraph shall be
23 posted within the applicable time period for serving notice and
24 shall include the date the notice was posted.

25 (6) A method of providing notice that results in the notice
26 actually being received by the tenant.

27 b. A tenant shall serve notice on a landlord by one or more
28 of the following methods:

29 (1) Hand delivery to the landlord or the landlord's agent
30 designated under section 562A.13.

31 (2) Delivery evidenced by an acknowledgment of delivery
32 that is signed and dated by the landlord or the landlord's
33 agent designated under section 562A.13.

34 (3) Personal service pursuant to rule of civil procedure
35 1.305, Iowa court rules, for the personal service of original

1 notice.

2 (4) Delivery to an employee or agent of the landlord at the
3 landlord's business office.

4 (5) Mailing by both regular mail and certified mail, as
5 defined in section 618.15, to the address of the landlord's
6 business office or to an address designated by the landlord for
7 mailing.

8 (6) A method of providing notice that results in the notice
9 actually being received by the landlord.

10 2. Notice served by mail under this section is deemed
11 completed four days after the notice is deposited in the mail
12 and postmarked for delivery, whether or not the recipient signs
13 a receipt for the notice.

14 Sec. 2. Section 562A.12, subsection 6, Code 2009, is amended
15 to read as follows:

16 6. Upon termination of the landlord's interest in the
17 dwelling unit, the landlord's successor in interest shall have
18 all the rights and obligations of the landlord with respect to
19 the rental deposits, except that if the tenant does not object
20 to the stated amount within twenty days after written notice to
21 the tenant of the amount of rental deposit being transferred or
22 assumed, the obligations of the landlord's successor to return
23 the deposit shall be limited to the amount contained in the
24 notice. The notice shall contain a stamped envelope addressed
25 to the landlord's successor ~~and may be given by mail or by~~
26 ~~personal service.~~

27 Sec. 3. Section 562A.29A, Code 2009, is amended by striking
28 the section and inserting in lieu thereof the following:

29 **562A.29A Method of service of notice on tenant.**

30 1. A written notice of termination required under section
31 562A.27, subsection 1, 2, or 5, a notice of termination and
32 notice to quit under section 562A.27A, or a notice to quit
33 required by section 648.3, shall be served upon the tenant by
34 one or more of the following methods:

35 a. Delivery evidenced by an acknowledgment of delivery

1 that is signed and dated by a resident of the dwelling unit
2 who is at least eighteen years of age. Delivery under this
3 paragraph shall be deemed to provide notice to all tenants of
4 the dwelling unit.

5 *b.* Personal service pursuant to rules of civil procedure
6 1.305, Iowa court rules, for the personal service of original
7 notice.

8 *c.* Posting on the primary entrance door of the dwelling
9 unit and mailing by both regular mail and certified mail, as
10 defined in section 618.15, to the address of the dwelling
11 unit or to the tenant's last known address, if different from
12 the address of the dwelling unit. A notice posted according
13 to this paragraph shall be posted within the applicable time
14 period for serving notice and shall include the date the notice
15 was posted.

16 2. Notice served by mail under this section is deemed
17 completed four days after the notice is deposited in the mail
18 and postmarked for delivery, whether or not the recipient signs
19 a receipt for the notice.

20 Sec. 4. Section 562B.9, Code 2009, is amended by striking
21 the section and inserting in lieu thereof the following:

22 **562B.9 Notice.**

23 1. Notices required under this chapter, except those
24 notices identified in section 562B.27A, shall be served as
25 follows:

26 *a.* A landlord shall serve notice on a tenant by one or more
27 of the following methods:

28 (1) Hand delivery to the tenant.

29 (2) Delivery evidenced by an acknowledgment of delivery
30 that is signed and dated by a resident of the dwelling unit
31 who is at least eighteen years of age. Delivery under this
32 subparagraph shall be deemed to provide notice to all tenants
33 of the dwelling unit.

34 (3) Personal service pursuant to rule of civil procedure
35 1.305, Iowa court rules, for the personal service of original

1 notice.

2 (4) Mailing by both regular mail and certified mail, as
3 defined in section 618.15, to the address of the dwelling unit
4 or to an address provided by the tenant for mailing.

5 (5) Posting on the primary entrance door of the dwelling
6 unit. A notice posted according to this subparagraph shall be
7 posted within the applicable time period for serving notice and
8 shall include the date the notice was posted.

9 (6) A method of providing notice that results in the notice
10 actually being received by the tenant.

11 b. A tenant shall serve notice on a landlord by one or more
12 of the following methods:

13 (1) Hand delivery to the landlord or the landlord's agent
14 designated under section 562B.14.

15 (2) Delivery evidenced by an acknowledgment of delivery
16 that is signed and dated by the landlord or the landlord's
17 agent designated under section 562B.14.

18 (3) Personal service pursuant to rule of civil procedure
19 1.305, Iowa court rules, for the personal service of original
20 notice.

21 (4) Delivery to an employee or agent of the landlord at the
22 landlord's business office.

23 (5) Mailing by both regular mail and certified mail, as
24 defined in section 618.15, to the address of the landlord's
25 business office or to an address designated by the landlord for
26 mailing.

27 (6) A method of providing notice that results in the notice
28 actually being received by the landlord.

29 2. Notice served by mail under this section is deemed
30 completed four days after the notice is deposited in the mail
31 and postmarked for delivery, whether or not the recipient signs
32 a receipt for the notice.

33 Sec. 5. Section 562B.13, subsection 7, Code 2009, is amended
34 to read as follows:

35 7. Upon termination of the landlord's interest in the

1 manufactured home community or mobile home park, the landlord's
2 successor in interest shall have all the rights and obligations
3 of the landlord with respect to the rental deposits, except
4 that if the tenant does not object to the stated amount within
5 twenty days after written notice to the tenant of the amount of
6 rental deposit being transferred or assumed, the obligations
7 of the landlord's successor to return the deposit shall be
8 limited to the amount contained in the notice. The notice
9 shall contain a stamped envelope addressed to the landlord's
10 successor ~~and may be given by mail or by personal service.~~

11 Sec. 6. Section 562B.27A, Code 2009, is amended by striking
12 the section and inserting in lieu thereof the following:

13 **562B.27A Method of service of notice on tenant.**

14 1. A written notice of termination required under section
15 562B.25, a notice of termination and notice to quit under
16 section 562B.25A, or a notice to quit required by section
17 648.3, shall be served upon the tenant according to one or more
18 of the following methods:

19 a. Delivery evidenced by an acknowledgment of delivery
20 that is signed and dated by a resident of the dwelling unit
21 who is at least eighteen years of age. Delivery under this
22 paragraph shall be deemed to provide notice to all tenants of
23 the dwelling unit.

24 b. Personal service pursuant to rule of civil procedure
25 1.305, Iowa court rules, for the personal service of original
26 notice.

27 c. Posting on the primary entrance door of the dwelling
28 unit and mailing by both regular mail and certified mail, as
29 defined in section 618.15, to the address of the dwelling
30 unit or to the tenant's last known address, if different from
31 the address of the dwelling unit. A notice posted according
32 to this paragraph shall be posted within the applicable time
33 period for serving notice and shall include the date the notice
34 was posted.

35 2. Notice served by mail under this section is deemed

1 completed four days after the notice is deposited in the mail
2 and postmarked for delivery, whether or not the recipient signs
3 a receipt for the notice.

4 Sec. 7. Section 631.4, subsection 2, Code Supplement 2009,
5 is amended by striking the subsection and inserting in lieu
6 thereof the following:

7 2. *Actions for forcible entry and detainer.* The manner of
8 service of original notice and the times for appearance for an
9 action for forcible entry and detainer shall be governed by the
10 requirements of chapter 648.

11 Sec. 8. Section 648.3, Code 2009, is amended to read as
12 follows:

13 **648.3 Notice to quit.**

14 1. Before action can be brought ~~in any except the first of~~
15 ~~the above classes,~~ under any ground specified in section 648.1,
16 except subsection 1, three days' notice to quit must be given
17 to the defendant in writing. However, a landlord who has given
18 a tenant three days' notice to pay rent and has terminated
19 the tenancy as provided in section 562A.27, subsection 2, or
20 section 562B.25, subsection 2, if the tenant is renting the
21 manufactured or mobile home or the land from the landlord, may
22 commence the action without giving a three-day notice to quit.

23 2. A notice to quit required under subsection 1 shall
24 be served on the defendant according to one or more of the
25 following methods:

26 a. Delivery evidenced by an acknowledgment of delivery that
27 is signed and dated by a resident of the premises who is at
28 least eighteen years of age. Delivery under this paragraph
29 shall be deemed to provide notice to the defendant.

30 b. Personal service pursuant to rule of civil procedure
31 1.305, Iowa court rules, for the personal service of original
32 notice.

33 c. Posting on the primary entrance door of the premises and
34 mailing by both regular mail and certified mail, as defined
35 in section 618.15, to the address of the premises or to the

1 defendant's last known address, if different from the address
2 of the premises. A notice posted according to this paragraph
3 shall be posted within the applicable time period for serving
4 notice and shall include the date the notice was posted.

5 3. A notice to quit served by mail under this section is
6 deemed completed four days after the notice is deposited in the
7 mail and postmarked for delivery, whether or not the recipient
8 signs a receipt for the notice.

9 Sec. 9. Section 648.5, Code 2009, is amended by striking the
10 section and inserting in lieu thereof the following:

11 **648.5 Venue — service of original notice — hearing.**

12 1. An action for forcible entry and detainer shall be
13 brought in a county where all or part of the premises is
14 located. Such an action shall be tried as an equitable action.
15 Upon receipt of the petition, the court shall set a date, time,
16 and place for hearing. The court shall set the date of hearing
17 no later than eight days from the filing date, except that the
18 court shall set a later hearing date no later than fifteen days
19 from the date of filing if the plaintiff requests or consents
20 to the later date of hearing.

21 2. Original notice shall be served upon a defendant by one
22 or more of the following methods:

23 a. Delivery evidenced by an acknowledgment of service that
24 is signed and dated by a resident of the premises who is at
25 least eighteen years of age. Delivery under this paragraph
26 shall be deemed to provide notice to all tenants or residents
27 of the premises. Service of original notice under this
28 paragraph is invalid if the acknowledgment of service is signed
29 and dated less than three days prior to the hearing.

30 b. Personal service pursuant to rule of civil procedure
31 1.305, Iowa court rules, for the personal service of original
32 notice. Service of original notice under this paragraph shall
33 not occur less than three days prior to the hearing.

34 c. If service cannot be made following two attempts using
35 a method specified under paragraph "a" or "b", by posting on

1 the primary entrance door of the premises and mailing by both
2 regular mail and certified mail, as defined in section 618.15,
3 to the address of the premises or to the defendant's last known
4 address, if different from the address of the premises. An
5 original notice posted according to this paragraph shall be
6 posted not less than three days prior to the hearing and shall
7 include the date the original notice was posted. Service of
8 original notice by mailing shall occur not less than three days
9 prior to the hearing.

10 3. Service of original notice by mail is deemed completed
11 four days after the notice is deposited in the mail and
12 postmarked for delivery, whether or not the recipient signs a
13 receipt for the original notice.

14 4. If service of original notice is made by posting and
15 mailing under subsection 2, paragraph "c", the plaintiff
16 shall, at or before the time of the hearing, file one or more
17 affidavits describing the time and manner in which the notice
18 was posted and mailed. The plaintiff shall attach copies of
19 the documents that were mailed and posted to the affidavits.

20 5. A default judgment shall not be entered against a
21 defendant if original notice has not been served on the
22 defendant as required in this section. If the original notice
23 cannot be served within the time periods required in this
24 section, the court may set a new hearing date and time.

25 6. At the hearing, except for actions commenced as a small
26 claim action under chapter 631, the court shall determine
27 whether a genuine issue of material fact exists in the action.
28 If the court determines that a genuine issue of material fact
29 exists, an evidentiary hearing on the petition shall be held
30 and the court shall continue the hearing to a future date and
31 issue all appropriate orders relating to discovery and trial
32 preparation.

33 Sec. 10. REPEAL. Section 648.10, Code 2009, is repealed.

34 Sec. 11. EFFECTIVE UPON ENACTMENT. This Act, being deemed
35 of immediate importance, takes effect upon enactment.

EXPLANATION

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This bill amends the service of notice requirements for landlords and tenants under Code chapter 562A (uniform residential landlord and tenant Act), the service of notice requirements for landlords and tenants under Code chapter 562B (manufactured home communities or mobile home parks residential landlord and tenant Act), and the service of notice requirements in an action for forcible entry and detainer. The bill is in response to the Iowa supreme court's November 20, 2009, decision in War Eagle Village Apartments v. Plummer, 775 N.W.2d 714 (Iowa 2009).

The bill strikes and replaces Code sections 562A.8 and 562B.9. Those Code sections, as amended, provide that notices to tenants and landlords required under Code chapters 562A and 562B, except certain notices to quit, certain notices of termination, and notices to quit required by Code section 648.3, must be served according to one or more of the methods specified in the bill.

The bill strikes and replaces Code sections 562A.29A and 562B.27A relating to certain notices to quit, certain notices of termination, and notices to quit required by Code section 648.3. Under the bill, such notices must be served upon the tenant according to one or more specified methods. The acceptable methods of service for a notice include delivery evidenced by an acknowledgment of delivery that is signed and dated by a resident of the dwelling unit, personal service in the manner provided by the Iowa rules of civil procedure for the personal service of original notice, and both posting on the primary entrance door of the dwelling unit and mailing by both regular mail and certified mail.

The bill amends Code section 631.4 by providing that the manner of service of original notice and the times for appearance in an action for forcible entry and detainer that is commenced as a small claim are governed by the requirements of Code chapter 648.

1 Current Code section 648.3 requires that a three days'
2 notice to quit be given to a defendant before an action
3 for forcible entry and detainer may be initiated. The bill
4 requires such a notice to quit to be served on the defendant
5 according to one or more of the methods specified in the bill.
6 The acceptable methods of service include delivery evidenced
7 by an acknowledgment of delivery that is signed and dated by
8 a resident of the premises, personal service in the manner
9 provided by the Iowa rules of civil procedure for the personal
10 service of original notice, and both posting on the primary
11 entrance door of the dwelling unit and mailing by both regular
12 mail and certified mail.

13 The bill strikes and replaces Code section 648.5 relating to
14 service of original notice and other requirements for certain
15 forcible entry and detainer actions. The bill requires an
16 action for forcible entry and detainer to be brought in a
17 county where all or part of the premises is located, requires
18 such an action to be tried as an equitable action, and requires
19 the court to set a hearing no later than eight days from the
20 filing date, except in specified circumstances. The bill
21 requires service of original notice by delivery evidenced by
22 a signed and dated acknowledgment of service or by personal
23 service in the manner provided by the Iowa rules of civil
24 procedure for the personal service of original notice. If,
25 however, such service cannot be made following two attempts
26 by the plaintiff, service may be made by both posting on the
27 primary entrance door of the premises and by mailing by both
28 regular mail and certified mail.

29 If the original notice is posted, it must be posted not less
30 than three days prior to the hearing and shall include the
31 date the original notice was posted. The bill provides that
32 service of original notice by mailing must occur not less than
33 three days prior to the hearing and that service of original
34 notice by mail is deemed completed four days after the notice
35 is deposited in the mail and postmarked for delivery. If

1 service of original notice is made by posting and mailing, the
2 plaintiff is required, at or before the time of the hearing, to
3 file one or more affidavits explaining the time and manner in
4 which the notice was posted and mailed and attach copies of the
5 documents that were mailed and posted to the affidavits.

6 The bill provides that a default judgment may not be entered
7 against a defendant if original notice has not been served on
8 the defendant as required under the bill.

9 The bill also provides that, except for an action commenced
10 as a small claim, the court shall determine whether a genuine
11 issue of material fact exists in an action for forcible entry
12 and detainer. If the court determines that a genuine issue of
13 material fact exists, an evidentiary hearing on the petition
14 shall be held and the court shall continue the hearing to
15 a future date and issue all appropriate orders relating to
16 discovery and trial preparation.

17 The bill takes effect upon enactment.