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## **Serving 5-Day and 14-Day Rent Notices Correctly in Residential Nonpayment Cases**

For residential landlords in New York State, especially in Westchester and the greater New York City area, initiating a nonpayment eviction case involves complying with a complex and exacting legal process. Two key components of this process are the 5-Day Rent Notice and the 14-Day Rent Demand.

Both serve distinct legal functions and must be served with strict adherence to the law. Failure to properly draft or serve either notice can jeopardize your case, delay proceedings, and result in unnecessary legal costs.

### **□ 1. The 5-Day Rent Notice – What It Is and How to Serve It**

Purpose:

The 5-Day Rent Notice, required under Real Property Law § 235-e(d), notifies a tenant that rent has not been received within five days after it became due. It serves as an early warning—distinct from a legal demand or eviction threat.

Service Requirements:

- Must be sent by certified mail only.
- First-class mail is insufficient.
- No personal service or posting is required.

Timing and Strategy:

While the statute does not specify that the 5-Day Notice must precede the 14-Day Rent Demand, best legal practice is to send it before or at the same time as the 14-Day Notice. Courts have allowed tenants to raise failure to serve the 5-Day Notice as an affirmative defense, which could result in dismissal or delay of the case.

### **□ 2. The 14-Day Rent Demand – The Formal Legal Prerequisite**

Purpose:

The 14-Day Rent Demand, governed by RPAPL § 711(2), is the formal legal notice that must be served before a nonpayment petition can be filed in Housing Court. It informs the tenant that unless full payment is made within 14 days, eviction proceedings will be initiated.

Service Requirements:

- Must be served according to RPAPL § 735, which allows:
  - Personal delivery;
  - Substituted service (to someone of suitable age and discretion, plus mailing); or
  - Conspicuous place service (nailing and mailing), after reasonable diligence.
- Certified mail alone is not acceptable for the 14-Day Rent Demand.

Content:

The demand must include:

- Exact amount of rent owed;
- Rental periods covered by the arrears;
- A clear statement of the 14-day deadline to pay or face court action.

## □ **Why Proper Drafting and Service Are Crucial**

Mistakes in either notice—be it the method of service, timing, or content—can lead to:

- Dismissal of the eviction proceeding;
- Restarting the process, with lost rent and time;
- Legal challenges and potential counterclaims by tenants;
- Courts questioning the landlord's compliance with the HSTPA and procedural fairness.

The initial notices set the tone and establish legal compliance for your case. Courts, especially in downstate counties, are increasingly strict about landlords satisfying these preconditions.

## ⚖️ **Let Us Help You Get It Right**

At James G. Dibbini & Associates, P.C., we specialize in landlord-tenant law and have helped thousands of landlords successfully navigate nonpayment cases. We prepare and supervise the service of both the 5-Day and 14-Day notices, ensuring they comply with the latest requirements under the HSTPA, RPAPL, and relevant case law.

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