

TIP OF THE MONTH:

Charging Actual Damages for the Service of Notices

By Jim Straub, Oregon Rental Housing Association Legislative Director

You will recall I'm sure that after the 2009 legislative session, it is no longer legal in the state of Oregon to charge a flat fee for serving notices to your tenants (and most other non-compliance fees went away too). Although this may be revisited in legislative sessions in the future, for now you may only charge your tenants for actual damages caused by the service of notice. But what does this mean?

I have included an example of a worksheet that I like to use when I serve a notice. It itemizes the damages I have actually sustained during the process of serving the notice. I have identified those categories to be: time incurred, cost of the actual form(s), total mileage, and postage. Let's take a look at them in detail.

- 1) Time incurred. This should represent the actual cost of your time taken to prepare and serve the notice (whether post-and-mail or by personal delivery), but it generally should not exceed the cost to have a professional serve the notice on your behalf. I do not believe you should charge this fee for mail-only notices. A professional's fee will vary by area but in my city (Eugene/Springfield area), it is approximately \$35.00.
- 2) Cost of forms. You will most likely incur a fee to purchase a legal form from your local ROA/RHA, and you may pass this cost along to your tenant.
- 3) Total mileage. You may charge the cost round-trip at the current IRS allowable mileage fee of \$.51 per mile (as of September, 2011).
- 4) First Class Mail Postage. If you are mailing-only or serving via post-and-mail, you will incur the cost of first class postage. Again, you may pass that amount along.

At this point, these are the expenses that I have identified as actual damages. There may be others and, by way of full disclosure, my informal worksheet is something I use in-house but has not been tested in a court of law. The tenants never need to see your worksheet (unless there is a dispute and you choose to share it). As such, you are free to make use of it but be aware that if it is challenged by a tenant, a local judge in your area may or may not agree with my interpretation. So, in other words, use it at your own risk and don't sue me!

ACTUAL DAMAGES BILLING FORM

(Example – 72 hour notice served for non-payment of rent)

DATE ACTION TAKEN	<u>09/08/2011</u>
BREACH OF CONTRACT	<u>Failure to pay rent – Sept. 2011</u>
ACTION TAKEN	<u>72-hour notice for non-payment of rent</u>
PERSON SERVING NOTICE	<u>John Doe</u>

TIME INCURRED 1/2 hrs x \$32.00 charge per hour = \$ 16.00

COST OF FORMS \$1.00 per form x 1 # of forms = \$ 1.00

TOTAL MILEAGE 7 total miles x \$.55 per mile = \$ 3.57

FIRST CLASS MAIL

POSTAGE \$.44 total postage = \$.44

TOTAL BILLABLE TO RESPONSIBLE PARTY = \$ 21.01

Signature of Person Serving Notice