

No Substitute for Specificity: Dangers of an E-mail Notice to Pay Rent or Quit

A recent California Court of Appeal decision addressed the need for specificity in notice provisions in contracts and the danger of not following those provisions. While the case arose in the unlawful detainer setting, everyone dealing with real estate contracts should be aware of its lessons.

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In order to take advantage of the summary remedy of unlawful detainer, a landlord must strictly comply with the statutory notice requirements. However, strict compliance requirements have been relaxed in some cases where the tenant admits that it actually received the notice. It stands to reason that if the lease allows service by e-mail, the tenant's actual receipt of an e-mail notice to pay rent or quit should constitute effective notice. However, in a June 14, 2010 ruling, the California Court of Appeal held to the contrary in *Culver Center Partners East # 1, L.P. v. Baja Fresh Westlake Village, Inc.* B217037.

Culver Center involved a commercial lease which provided that notice to the tenant could be provided by several means, including delivery to the tenant's corporate leasing manager (at an address other than the leased premises) or electronically. The lease did not specify an e-mail address. When the tenant missed a rent payment, the landlord attempted to serve a notice to pay or quit. The landlord admittedly mailed the notice to the wrong address, but relied on its e-mail of a copy of the notice to the leasing manager. The leasing manager admitted receiving the e-mail.

The court in *Culver City* looked to California's requirement of strict compliance and concluded that the electronic notice was insufficient even though the lease allowed e-mail service and the leasing manager admitted receiving the e-mail. The court held that because the

lease failed to specify an e-mail address, all notices, including notices served electronically, had to be served at the physical address designated in the lease. The court admitted that “this focus on the physical location of receipt (or delivery) of an e-mail has some artificiality (and technological naiveté) in this age of laptop computers and smartphones.” Nevertheless, “the fault, if there be any, lies in the language of the lease itself, which, while apparently contemplating ‘electronic service,’ nonetheless omits any reference to an electronic notification address to accomplish that service.”

Perhaps the most interesting aspect of *Culver City* is not so much that the court requires the inclusion of an e-mail address in order for electronic notice to be effective, but rather that it suggests that where no e-mail address is specified, electronic notice may be effected by e-mailing notice to the physical location designated in the lease. The court ostensibly understands that an e-mail address has no physical location. Thus, the court’s decision to leave the door open for electronic service in this manner is curious indeed.

For practical purposes, this apparent exception is no exception at all. Post-*Culver City*, all new leases should include a specific e-mail address in the notice provisions. For existing leases which allow electronic service, unless a specific e-mail address is set forth in the lease, a landlord should not rely on delivery by e-mail to satisfy the notice provision.

The reasoning of this case could be broadened beyond the unlawful detainer context. In every contract in which various methods of notice are permitted, parties should give notice in a manner which (1) ensures receipt, (2) allows verification of that receipt, and (3) strictly complies with the contract.