



# Pre-Suit Notice Letter

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A letter from a company notifying a potential defendant of its intent to file a lawsuit unless the recipient cures the defect that is grounds for the suit or pays a certain amount in damages. This Standard Document has an integrated note with important explanations and drafting tips.

## DRAFTING NOTE

### General

A plaintiff may be required to send the defendant (and other interested parties) a pre-suit notice letter as a condition to filing a lawsuit under certain circumstances. For example, a pre-suit notice letter may be required:

- Under the terms of a contract.
- For suits brought under the Clean Water Act (*33 U.S.C. § 1365(b)*).
- Where the defendant is a governmental body (*D.C. Code § 12-309*; see also *N.Y. Village Law § 6-628*).
- In medical malpractice suits (*Fla. Stat. § 766.106*).
- For lawsuits brought under state consumer protection statutes (*Tex. Bus. & Com. Code § 17.505(a)*).

A plaintiff who fails to provide the defendant with the required pre-suit notice risks dismissal of the lawsuit. Therefore, plaintiff's counsel must determine whether a pre-suit notice is required before commencing any action and defense counsel should consider making a motion for dismissal if the required notice has not been provided.

Federal and/or state law may offer guidance on the language that a pre-suit notice must include, to whom and when it must be sent, and the required method of delivery. For example:

- The Clean Water Act requires the plaintiff to send the pre-suit notice at least 60 days before filing suit (*33 U.S.C. § 1365(b)(1)(A)*).
- Washington, D.C. law requires pre-suit notice of a lawsuit for unliquidated damages to person or property against the District of Columbia to be sent to the Washington, D.C. Mayor's Office or Corporation Counsel within six months after the claimed injury regarding the time, place, cause and circumstances of the injury or damage (*D.C. Code § 12-309*).
- Texas law requires plaintiffs alleging tort claims against a governmental entity to send a pre-suit notice describing the incident that serves as the basis for the lawsuit, the time and place of the incident and the damage or injury claimed (*Tex. Civ. Prac. & Rem. § 101.101(a)*).
- Florida law requires the pre-suit notice in a medical malpractice action to be sent to the defendant by certified mail, return receipt requested (*Fla. Stat. § 766.106(2)(a)*).

However, federal or local law may not always provide sufficient guidance regarding the mechanics of making a pre-suit notice. In the absence of governing law, a pre-suit notice letter should at a minimum:

- Describe the plaintiff's allegations in sufficient detail to place the defendant on notice about the basis for the contemplated lawsuit.
- Identify all of the potential defendants and other parties who are entitled to notice.
- State the relief the plaintiff seeks.
- Provide the defendant with sufficient time to cure the problem and/or settle the case outside of court.
- Be sent by a reliable method of delivery.

[COMPANY LETTERHEAD]

[RECIPIENT'S NAME]

[STREET ADDRESS]

[CITY, STATE AND POSTAL CODE]

[DATE]

Dear [RECIPIENT],

Pursuant to [STATUTE / CONTRACTUAL PROVISION], you are hereby given notice that [CLIENT] intends to commence a lawsuit against you for [AMOUNT OF DAMAGES OR EQUITABLE RELIEF] due to [DESCRIBE CONDUCT OR INCIDENT THAT SERVES AS THE BASIS FOR THE LAWSUIT]. We will file suit against you if you do not [EXPLAIN HOW TO CURE THE DEFECT / PAY AMOUNT OF DAMAGES] within [NUMBER] days after receiving this letter.

Please contact me as soon as possible at [PHONE NUMBER] to resolve this matter.

The foregoing is not intended to be a complete recitation of all applicable law and/or facts, and shall not be deemed to constitute a waiver or relinquishment of any of [CLIENT'S] rights or remedies, whether legal or equitable, all of which are hereby expressly reserved, including [CLIENT'S] right to all available remedies against [RECIPIENT], including but not limited to the recovery of costs and attorneys' fees.

Sincerely,

[NAME OF ATTORNEY]



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