

Demand letter rubric

- **Start with the facts of the case as you see them. Don't exaggerate. Your letter may end up setting forth the facts of the case in small claims court. Although you should be scrupulously accurate, your tone should be subtly intimidating.**
- **Review the unsuccessful steps you have taken to resolve the problem.**
- **Provide a little relevant law supporting your claim.**
- **Give a specific solution, with a specific due date. Specify exactly what the party must do to comply (i.e. check must be a certified check, etc.)**
- **Give the consequences of failing to accept the offer of settlement. The consequences should make the offer of settlement look very reasonable.**
- **Copy everyone: e.g. Better Business Bureau, regulatory agencies, newspapers, etc. Don't worry about whether the entity is interested or not – the more entities you copy, the better.**
- **Send by certified mail AND by regular mail. A certified letter does not always contain good news, and the recipient may hesitate to open it. There is a presumption that a letter sent by U.S. first class mail reaches the addressee.**

Sample Demand Letter #1

Louis S. Bannon
25777 Meadow Street West
Apartment 601
Tampa, Florida 33760

Sent By Certified Mail Return Receipt Requested
Copy Sent By United States First Class Mail

June 28, 2010

Ms. Anne Blah
Property Manager
Canyon Lakes Apartments
11401 El Camino Real
Clearwater, Florida

Re: Apartment 1710
Louis Bannon Final Account Statement at Move-out

Dear Ms. Blah:

As your records will show, I moved into Canyon Lakes Apartment Number 1710 on January 24, 2009, gave timely notice of my intention to vacate at the termination of my lease, and vacated at termination on April 17, 2010. On April 19, 2010 I made an e-check payment of \$85.00 to cover cleaning costs on the apartment. I left my correct new address, as shown on this correspondence. I did not have a pet at any time during my tenancy.

During my tenancy I spilled coffee and other food substances on the carpet. Also, when Canyon Lakes Maintenance workers patched the plaster near the ceiling in the bedroom their equipment tore up a small portion of the carpet in that room.

kate bohl 11/8/14 9:59 AM

Comment: The first lawyer I ever worked for told me to send a demand letter by both certified mail and first class mail. Certified letters rarely bring good news, and people may refuse to sign for them. By sending an additional copy by regular first class mail you can take advantage of the legal presumption that first class mail is received by the recipient absent proof to the contrary.

kate bohl 11/8/14 9:59 AM

Comment: A demand letter in a case such as this, where numerous amounts, dates and details must be kept in mind is particularly useful. If the case cannot be settled at this stage the demand letter will be useful to the judge in a lawsuit.

Your Legal Writing Coach

My final account statement, dated April 26, 2010, showed a \$400.00 pet fee and a \$200.00 charge for “3 day pet treatment and full dye” on the carpet. Since I did not have a pet at any time during my tenancy I called the office and spoke to Ms. Paula Branden in order to have these erroneous charges removed. She informed me that “they” had pictures and could “tell by the stains” that the stains were pet stains. She stated that she would not remove the pet related charges from my statement even though she admitted that no member of the staff at Canyon Lakes had even seen a pet in my apartment, during routine maintenance, miscellaneous inspections or on any other occasion.

If \$600.00 in erroneous charges had not been added to my final statement, I would have received a refund of \$225.83.

I asked to speak to you, in your capacity as property manager, regarding these erroneous charges; Ms. Branden said you would call. You did not call.

In addition to the factual invalidity of any claim that I had a pet at any time during my tenancy, the \$600.00 charge is legally invalid as well.

Florida Statute Section 83.49 governs “Deposit money *or advance rent*; duty of landlord and tenant” (emphasis supplied.) Florida Statute Section 83.49(3)(a) provides, in pertinent part, that “the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim.” The statute lists monies to which this requirement does not apply; “advance rent” clearly falls within the requirement. The amounts you deducted came from advance rent I had paid.

If simple courtesy did not prompt you to notify me of the steps you planned to take, the State of Florida imposed an affirmative duty upon you as a matter of law.

I agree that the carpet required attention after I moved out; the damage, however, was not due to a pet. In order to resolve this matter as efficiently as possible I am willing to pay the \$200.00 carpet cleaning fee listed on my final statement even though the damage was not caused by a pet and accept a refund of \$25.83. If you wish to accept this offer, please respond in writing at the address noted above within 30 days of the date of this letter. If you choose not to accept my offer, I am ready to proceed with legal action. If I

kate bohl 11/8/14 9:59 AM

Comment: Repetition of the assertion that he had no pet works in the writer's favor by allowing him to emphasize that point.

Your Legal Writing Coach

must file legal action I will be seeking a refund of the full \$225.83, in addition to all court fees and costs.

Given current real estate conditions, the goodwill you would lose by pursuing a specious claim against me would cost you far more than \$400.00. I look forward to your prompt response.

Sincerely,

Louis S. Bannon

C.C.: Florida Apartment Association
341 N. Maitland Ave.
Suite 130
Maitland, FL 32751

Florida Department of Agriculture and Consumer Services
2005 Apalachee Parkway
Tallahassee, FL 32301

Better Business Bureau
2655 McCormick Dr.
Clearwater, FL 33759

kate bohl 11/8/14 9:59 AM

Comment: Pointing out ALL the potentially negative consequences of failing to settle strengthens the demand.

kate bohl 11/8/14 9:59 AM

Comment: Spelling out the full addresses of the recipients copied is not necessary, but may make the list look weightier.

Sample Demand Letter #2

Caroline C. McMillan
Attorney at Law

11600 Fox Tail Ct.
Cityside, NC 28677
Telephone: (777) 392-1234

January 10, 2010

Sent By Certified Mail Return Receipt Requested
Copy Sent By United States First Class Mail

Ms. Cheryl Garding
Vice-President Operations
Seven Seas Cruises
700 Cannon Ave., Suite 200
CA 91367

Re: Romantic Danube 8-Day Cruise Budapest to Nuremberg – Nov. 22-29, 2009

Dear Ms. Stratton:

I represent Terry Smith and Glenda Jones who were passengers on a Seven Seas Cruise that departed Budapest on November 22, 2009 and was scheduled to dock on the morning of November 28, in Nuremberg, and disembark the next day. That did not happen. Instead, they disembarked on November 28th in Kelheim. The 8-Day cruise became a 6-Night cruise with a stay at an inferior airport hotel on the final night. My clients were not informed of the change in itinerary until November 24, 2009, by letter from Jules Oliver. Had they known that they were essentially signing up for a 6-Night cruise, they would never have booked the trip.

The cruise itinerary and departure information states on page 13: “DAY 7: Main-Danube Canal & Nuremberg: Port Location: Your ship docks in the morning at Nuremberg Pier in the Gibitzenhof, about four miles south of Nuremberg City Center.” However, instead of being four miles from the City Center – my clients found themselves two hours by bus from the city center. The bus ride, the resulting reduced time in Nuremberg, the packing and unpacking of suitcases, and the notably inferior hotel, ruined the trip for my clients. What was to have been a nostalgic reunion for two old friends, turned into a disappointing and frustrating misadventure.

In its brochure, Seven Seas advertises, “Seven Seas takes you to the heart of every destination . . . unlike ocean cruises; rivers provide easy access to city centers.” Seven

kate bohl 11/8/14 10:01 AM

Comment: If you are demanding compensation from a business that advertises or distributes brochures then citing the business’s own statements can be particularly effective.

Your Legal Writing Coach

Seas further promises, “HASSEL_FREE TRAVEL: After boarding the ship, unpack-just once – in your spacious river-view stateroom.” Finally, Seven Seas offers this assurance: “No need to worry about maps, traffic, congestion or the many other hassles of traveling by bus or train.”

In reality, Seven Seas did not take my clients to the heart of their destination; it did not enable them to unpack just once; and they *were* specifically subjected to the “hassles of traveling by bus.” In short, they were victims of misrepresentation and fraud in the inducement because of the promises Seven Seas made in its brochure.

The elements of fraud in the inducement include:

- A misrepresentation of material fact
- The representor knew *or should have known* that it was false
- The representor intended that the representation would induce another to rely on it, and
- The plaintiff suffered injury in justifiable reliance on the representation

Under California law, the representor does not have to have knowledge of the falsity of his statement to be held liable, instead, negligent misstatement is enough. A material omission may also support a claim for fraudulent inducement. See *California Civil Code Section 3294 et seq.*

My clients had planned this trip for some time and are deeply disappointed. They did not enjoy the stay in the airport hotel or the 2-hour bus ride taking them there, or the packing and unpacking. In his letter to passengers, Mr. Oliver admitted that the mistake was due to a “breakdown in our internal communication” and not to any unforeseeable problem. He also admitted that passengers were not timely notified. Because you caused the problem, admitted to causing the problem, and even offered to lessen its impact by providing “free house wine” (an empty gesture for my clients who do not drink), I expect you to fix the problem.

My clients want the cost of the cruise refunded in full. They spent more than the \$5238.97 for a ruined vacation. At this point in time we would like to settle this amicably and avoid litigation. However, if this dispute cannot be settled amicably, we will not hesitate to file suit.

If you wish to settle this matter quickly and avoid the costs of litigation, please send a certified check for the full amount (\$5238.97), made out to my clients: Terry Smith and Glenda Jones. Please send to the address on my letterhead, within ten business days of receipt of this letter.

I look forward to hearing from you at your earliest convenience.

Sincerely,

kate bohl 11/8/14 10:01 AM

Comment: Breaking the offending conduct into individual points, and repeating “did not” allows the writer to emphasize the injury suffered by her clients

kate bohl 11/8/14 10:01 AM

Comment: One of the few places legalese is appropriate is in a demand letter written to a nonlawyer.

kate bohl 11/8/14 10:01 AM

Comment: In the real case on which this sample is based, the cruise line made an initial offer of \$1300. The clients refused to accept it, and the cruise line subsequently offered \$2000. The clients accepted this offer – not bad compensation for a brief inconvenience!

Your Legal Writing Coach

Caroline C. McMillan, Esq.

cc. Terry Jones and Glenda Smith
California Consumer Protection Foundation
California Department of Consumer Affairs

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kate bohl 11/8/14 10:01 AM

Comment: Always copy at least one other entity or person to insure that your demand letter will be treated seriously. Don't worry about whether the copied recipient(s) are likely to follow up or not. The point is to have more people read your letter.