

INSTRUCTION FOR FILING A FORCIBLE DETAINER

Notice to Vacate:

By statute, the Landlord must give the Tenant written notice of the eviction suit **before** filing a suit for Forcible Detainer. Where written notices are required in the following causes of action, except for attorney's fees and costs of suit, the notice may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises by affixing the notice to the inside of the main entry door. Notice may also be by regular or certified mail, return receipt requested, to the premises in question.

If your cause of action (the reason you are filing) is:

- 1) Defaults of an Oral or Written Lease, i.e., Non-payment of rent, Dog on Premises, etc.: **3 day written notice is required** - can be as short as 1 day if that shorter period is provided for in a written lease. Some Notice is required.
- 2) Periodic Tenancies (month to month, week to week, etc.) Where Landlord desires possession. (This would also be in a case where the Tenant was holding over after the expiration of the primary term of the lease): 3 days written notice is required - can be shortened or lengthened by written lease or agreement. Some notice is required. Periodic tenancies may require a notice to terminate the lease or agreement.
- 3) Tenant at will or Tenant at Sufferance: 3 days written notice is required - can be shortened or lengthened by written lease or agreement. Some notice is required.
- 4) Tenant after Tax Foreclosure Sale or Trustee's Foreclosure Sale: If Tenant timely pays rent and is not otherwise in default under the Tenant's lease after foreclosure, the purchaser must give a residential Tenant of the building at least 30 days written notice to vacate if the purchaser chooses not to continue the lease. The Tenant is considered to timely pay the rent if during the month of the foreclosure sale, the Tenant pays the rent for that month to the Landlord before receiving any notice that a foreclosure sale is rescheduled during the month or pays the rent for that month to the foreclosing lienholder or the purchaser that requests payment.
- 5) Forcible entry and detainer suits (where a person enters the property without legal authority or by force and refuses to surrender possession on demand): Oral or written notice to vacate immediately or by a specified deadline.
- 6) Occupant is a Tenant of a person who acquired possession by Forcible Entry: 3 days written notice to vacate.
- 7) Attorney's Fees and Costs of Suit: 10 days noticed by registered or certified mail, return receipt requested. The notice period can be shortened or waived by a written lease. If the lease provides for attorney's fees, the notice provision in the lease controls. If the lease is silent as to attorney's fees, a 10 day notice is required. If the Landlord provides the Tenant notice for attorney's fees or if a written lease entitles the Landlord or the Tenant to recover attorney's fees, the prevailing Tenant is entitled to recover attorney's fees from the Landlord. A prevailing party is entitled to recover all costs of court.

VENUE:

Cases of Forcible Detainer and Forcible Entry and Detainer must be filed in the precinct of the county where all or part of the leased premises are located.

COSTS:

The fee for filing on one Defendant (i.e., John Doe and all occupants) is \$131.00 (\$46.00 Court Filing Fee and \$85.00 Constable's Service Fee.) An additional \$89.00 is needed for each additional Defendant named in your suit (includes an \$85.00 Service Fee and \$4.00 additional Citation Issuance (ex: \$215.00 is the total due for 2 Defendants).

CITATION:

A Citation (Notice to the Defendant) is prepared by our office and sent with a copy of your Petition to the Constable for Service. The Constable will be diligent to make personal contact with the Defendant. If personal contact is unable to be made the Constable will request to serve Defendant by alternative service.

HEARINGS:

There will be a hearing scheduled no sooner than the 10th day or later than the 21st day from the date your suit is filed with the Court. If you file your suit in person, you will be given a court date once your suit has been assigned a case number. If you file your suit by mail, you will be notified of your court date by mail. Be sure to ascertain the hearing date within 3 days of filing your suit as failure to appear for the scheduled hearing may result in your case being dismissed for want of prosecution.

COURT APPEARANCE:

The Plaintiff has the burden of proof and must meet that burden by showing through evidence that the Defendant is at fault. The Plaintiff should bring to trial all proof and evidence necessary to substantiate the claim. It is the responsibility of any party who files a motion, pleading, or other information with the Court to furnish a copy of the filing to all parties involved.

DEFAULT JUDGMENT: The Defendant in the suit may file an answer with the Court. Plaintiff should appear on the hearing date whether the Defendant files an answer or not. If the Defendant fails to appear for the Hearing, the Plaintiff may be awarded a Default Judgment. **THE PLAINTIFF STILL MUST PROVE THE CASE IN OPEN COURT** on the Hearing date.

TRIAL BY JURY:

Either party may request a trial by jury. The request must be filed with the court at least 3 days prior to the trial date. A jury fee of \$22.00 is due at the time requested.

WHO MAY REPRESENT THE PLAINTIFF:

- 1) For non-payment of rent or the Tenant is holding over after the rental period, the owner, agent (manager) or an attorney may represent the Plaintiff.
- 2) Any other reason, (i.e., Defaults on Executory Contracts, Mortgage Foreclosures, Forcible Entry and Detainer Suits; where Tenant enters by force or with out legal authority, defaults on lease provisions) only the owner of the premises or an attorney for the owner may represent the Plaintiff in a trial by the Judge or Jury.

WRIT OF POSSESSION:

If Plaintiff is: 1) awarded a judgment for possession of the premises; and 2) if the Defendant does not make a Motion to set aside default judgment within 5 days from the date the judgment is signed, or; 3) the Defendant does not appeal the judgment within 5 days from the date the judgment is signed, Plaintiff's remedy to gain possession of the premises is a Writ of Possession. On the 6th day after a judgment for possession is awarded, Plaintiff, may request a Writ of Possession which allows the Constable to oversee the move-out/removal of the Defendant(s) (and all property belonging to the Defendant), from the leased premises, and see that no breach of the peace is violated. The fee for filing a Writ of Possession is \$155.00 (\$5.00 Writ Issuance Fee and \$150.00 Constable Service Fee). You should call the Constable's Office for the procedures on executing a Writ of Possession.

ADDITIONAL INFORMATION:

At the time you file your Forcible Detainer suit, you may also file for back rent in the maximum amount of \$10,000.00.

NOTE:

THESE INSTRUCTIONS ARE A BROAD INTERPRETATION OF THE LAWS THAT APPLY TO THE COURT. ANY LEGAL QUESTIONS OR LEGAL INTERPRETATION SHOULD BE BASED UPON YOUR OWN RESEARCH OF THE MATTER OR THE ADVICE OF YOUR ATTORNEY.