

PROCEDURES FOR INITIATING A FORCIBLE DETAINER ACTION

A. Type of Forcible Detainer

Please notify this office prior to filing as to the type of eviction you are filing the following:

1. **Immediate Termination (Eviction for criminal activity, severe property damage, etc.)**

- a. You must speak with an attorney in our office prior to serving the notice. Certain activities may not be grounds for an immediate eviction. Our office can also prepare and serve the notice for you, as can your process server.
- b. The notice must specify the conduct which is grounds for immediate eviction in detail, including dates, times and the nature of the incident.
- c. You must have witnesses with personal knowledge of the incident who are willing to appear in court and testify on behalf of management. Written statements from witnesses are not usable in court.
- d. Security guard logs and police reports may also not be acceptable as evidence. Be prepared with names, addresses and/or badge numbers if subpoenas are necessary.
- e. Do not make comments to tenant such as “I will have you out in a few days” or “You better leave or I will take you to court”. These statements could be used against you at the court hearing. Simply serve the notice and wait for your day in court.
- f. If rent is owed when the immediate eviction is in process, and tenant attempts to tender rent, **DO NOT ACCEPT IT**. Acceptance of rent during this time could jeopardize the eviction and allow the tenant to remain in the property.

2. **Non-Compliance Eviction (10-day or 5-day Health and Safety)**

- a. As with an Immediate Termination, you must have witnesses with personal knowledge of the problems appears and testify at court. Before and after pictures, if applicable, may also be necessary to make your case.
- b. Once the noncompliance notice has been served, if rent is offered **DO NOT ACCEPT IT** unless the non-compliance breach has been cured. Acceptance of rent could jeopardize your eviction should the tenant not cure the breach of lease.
- c. Make sure your notice clearly details the alleged violation – dates, what happened, etc. The notice must tell the tenant what violation they are being accused of.

3. **Non-Payment of Rent**

- a. Your notice must be dated and signed by the individual serving the notice. If

the notice was mailed, eviction cannot be started until ten days after date mailed, or five days after the tenant signed for the mail.

- b. Notice should include all amounts owed by the tenant, including any balance (or credit balance), utilities or damages, where applicable, and any late charges and rent concessions that have been given. Fees for service of the notice or other charges such as deposits, etc. cannot be charged unless it is part of your lease agreement.
 - c. If the tenant attempts to tender a partial payment of the rent that is due, **DO NOT ACCEPT IT** without having the tenant sign a Partial Payment Waiver agreement. Failure to have the tenant sign this waiver could cause you to lose your right to the remaining rent owed by the tenant for that rental period and your right to proceed with an eviction.
 - d. After the court date is set, a copy of your five-day notice must be given to our office, either by mail or fax, for your court file. If we do not have a copy of the notice at the hearing, the court may dismiss your eviction. The courts also require a complete copy of your lease agreement in order to award all late charges and attorney fees.
4. Attached are various other notices that may need to be used during your tenancy. Please call with any questions.

B. Cancellations before court

You must call our office as soon as a tenant pays in order to cancel the court hearing. If we do not hear from you, we assume that we are to proceed with the eviction. You can cancel with our office up to the date and time of court; however, we may not be able to cancel with the attorney if you wait until the last minute to call. If for some reason, a court hearing is not cancelled, we can file a Motion to Set Aside the Judgment, if necessary. Remember, the tenant has until the court date to pay all monies due and owing, including all late charges, attorney fees and court costs. **LANDLORDS CANNOT REQUIRE PAYMENT OF FUTURE RENTS.** If payment in full is made, it is necessary for the landlord to cancel the court hearing immediately.

C. Judgments

1. At the hearing date, a Judgment will be entered if your tenant does not appear or if your tenant does appear and stipulates the Judgment. The attorneys who appear on your behalf do not make deals with your tenants without your approval, nor do the attorneys assure your tenants that if they pay the Judgment, they will be able to remain in the premises. Any payment arrangements are referred back to you. You do not have to reinstate the lease and accept payment, despite what the tenant tells. It is your choice. Any acceptance of money must accompany a written agreement signed by the tenant indicating whether you are reinstating the lease or just paying on the judgment.

2. Should your tenant appear and plead not guilty, a trial will be held. This may occur at a different date and time, but increasingly the Judges are hearing trials at the same time as the initial hearing. Therefore, if you think that your tenant may come to court and attempt to raise **ANY** issues regarding their nonpayment, you should plan to be at court. Please remember that we can not win a trial if there are no witnesses at court. This includes the management as a witness to the amount owed and the delivery of the notice.
3. The Judgment will require your tenant to vacate five days after court (or 12 – 24 hours in the case of an immediate eviction). If the tenant pays, or makes suitable arrangements to stay, you must notify our office to file a Satisfaction of the Judgment. If the tenant does not make arrangements and does not vacate, you will need to have our office file a Writ of Restitution so the Constable may come and remove the tenant for you. Writs are not filed automatically.
4. After the tenant vacates, apply the deposits to the tenant's account, including the Judgment where necessary. This must be done within fourteen (14) business days after tenant vacates the premises. If the deposits are applied to the Judgment, you must file a full or partial Satisfaction of the Judgment as soon as the amounts are applied. You may charge the tenant for the rest of the lease until you get it re-rented, any lease break fees in the contract, damages to the unit (include a copy of the receipts for the repairs), and any other costs you incur (including utilities, pool or yard service but only if the lease provides that the tenant is liable for these sums. You must return all sums you are not entitled to prior to the fourteen business days or you risk being liable for three times the amount. Send the itemization and/or the funds certified mail to the last known address.

D. Miscellaneous Issues

1. Discrimination issues continue to be a hot topic. Be careful about statements made upon refusal to leave—do not mention number of children, number of residents, or how many to a bedroom unless you seek legal advice first.
2. If you receive money from your tenant after court and you do not wish to have the tenant continue to reside at your rental property, **DO NOT GIVE A RENT RECEIPT**. Give or send the tenant a letter stating the money is being applied to the debt owed you, you are not reinstating tenant's lease agreement, and the tenant must vacate per the court order.
3. **REMEMBER**, you can only legally serve written notices one of two ways: 1) personally give the notice to the tenant or 2) send the notice by certified or registered mail. The notice is legally served five (5) days after mailing or when the tenant signs for his notice, whichever occurs first. If you deliver the notice to the door, you may risk having the eviction dismissed if the tenant denies receiving the notice.