

# OHIO EVICTION PROCESS

The following procedures have been adopted to insure that all parties in an eviction case know what is expected for both the First Cause of Action and the Second Cause of Action. The procedures outlined here also comply with the current case law and statutes for eviction proceedings in Ohio.

IF EITHER PARTY IN AN EVICTION ACTION IS OTHER THAN AN INDIVIDUAL THAT PARTY MAY HAVE TO BE REPRESENTED BY AN ATTORNEY. INFORMATION CONCERNING THIS REQUIREMENT IS ATTACHED TO THESE INSTRUCTIONS.

1. Eviction proceedings begin with the service of a Notice to Leave Premises (FORM #1). This notice must be completed and served as required by RC 1923.04. Some circumstances may also require that a notice complying with RC 5321.11 be served on the tenant as well as the 3-day notice. THESE NOTICES ARE JURISDICTIONAL. Failure to provide a copy of the notice(s) and evidence of service of the notice(s) may result in dismissal of the action.
2. A complaint for forcible entry and detainer (FORM #2) cannot be filed with the Clerk's Office until 3 days after service of the Notice to Leave Premises. You cannot count the day of service of the notice as one of the three days.
3. When the Eviction is filed, you are required to have the following items for filing with the Court:
  - a. Copy of the Three (3) Day Notice with evidence of service (Form #1).
  - b. An original Forcible Entry and Detainer Complaint with 2 copies of the complaint per defendant. (Form #2)
  - c. An original Notice of Abandonment with 2 copies per defendant. (Form #9)
  - d. A copy of the deed to the property and a copy of a tax bill. This establishes ownership of the rental unit. If more than one individual owns the real estate, ALL owners must sign the Forcible Entry and Detainer Complaint.
  - e. If there is a written lease a copy must be attached to the Complaint OR attached to the landlords first cause affidavit at the first hearing.
  - f. Filing fees: \$110.00 for one person and \$10.00 for each additional defendant. The fee must be paid in cash or money order or a business check. No personal checks are accepted.

If the eviction involves a manufactured home, both the owner of the manufactured home and the occupant (if not the same party) must be joined as defendants in the case.

The Clerk's Office will advise you of the hearing date for the First Cause of Action and the Second Cause of Action. In general all evictions filed on Monday or Tuesday will be scheduled for hearing two weeks later on Tuesday. Any evictions filed on Wednesday, Thursday or Friday will be scheduled for hearing three weeks later on Tuesday. This allows adequate time for service

of the summons and complaint. All money hearings are set for hearing five (5) weeks from the eviction hearing date.

The procedure for the First Cause of Action is outlined as follows:

1. RC 1923.07 provides that if the defendant does not appear in the action, the court shall try the cause as though the defendant were present.
2. Under holdings in Lynn v. Dusz (Dec. 18, 1986), Franklin App. No. 86AP-644-LW-3841 (10<sup>th</sup>), unreported and Hampshire Heights, Inc. v. Van Wormer (Lucas App. 1980), 17 Ohio Op 3d 287, it is the plaintiff who must present evidence which demonstrates a reasonable basis for sustaining the claim for forcible entry and detainer. As a minimum, one witness should be sworn and examined or some evidence should be adduced to sustain the claim. The evidence must come from someone who has PERSONAL KNOWLEDGE of the facts in question. This may be done by having the person present for the First Cause hearing or providing an affidavit from that person. A sample Landlords Affidavit for First Cause (Form #3) is included with the instructions. FAILURE TO HAVE A WITNESS OR AFFIDAVIT MAY RESULT IN DISMISSAL OF THE CLAIM.
3. At the hearing a Writ of Restitution specifying the number of days the tenant has to vacate the property will be issued. If a set out is needed, you will need to follow the procedure for set out in the NOTICE OF SET OUT PROCEDURE included in these instructions (See Praeceptum for Execution of Writ of Restitution – Form #4).

The same standards apply to evidence requirements at the Second Cause Hearing. A sample Landlords Affidavit for Second Cause (Form #5) is included with these materials. You are required to provide sufficient evidence for the Court to make an award. This may include receipts, photos, estimates and/or affidavits from service providers WHO HAVE PERSONAL KNOWLEDGE OF THE FACTS.

If you wish a continuance of either Cause of Action, YOU MUST FILE A WRITTEN MOTION WITH THE CLERK'S OFFICE (3<sup>RD</sup> FLOOR OF THE CITY BUILDING) TO CONTINUE THE DATE WITH A REASON FOR THE CHANGE (Form #6). At the First Cause Hearing, the Court may order a change in the Second Cause Hearing date and time; you are bound by that change unless you request a continuance in writing.

**THE COURT WILL NO LONGER ACCEPT IMPROPERLY EXECUTED AFFIDAVITS AS EVIDENCE FOR EITHER CAUSE.**

If you as the landlord resolve the issues with the tenant after you file the complaint, but before the court hearing date, you should file an Entry of Dismissal with the Clerk's Office. A Dismissal Entry (Form #7) is attached.

The attachments to these instructions include the following sample items that comply with current law.

1. Form #1 3-Day Notice
2. Form #2 Complaint for Forcible Entry and Detainer and Recovery of Money
3. Form #3 Landlord Affidavit First Cause
4. Form #4 Praeceptum for Execution of Writ of Restitution
5. Form #5 Landlord Affidavit Second Cause
6. Form #6 Motion for Continuance
7. Form #7 Dismissal Entry
8. Form #8 Motion to Execute Writ of Restitution with Request for Hearing
9. Form #9 Notice of Abandonment

**IN THE MUNICIPAL COURT OHIO**

Form #6

\_\_\_\_\_  
PLAINTIFF

CASE #

VS.

MOTION FOR CONTINUANCE

\_\_\_\_\_  
DEFENDANT

Now comes \_\_\_\_\_ Plaintiff/Defendant in the above entitled action and respectfully moves for a continuance of this matter now set before the court on: \_\_\_\_\_ 20\_\_, at \_\_\_\_\_ a.m./p.m.

For the following reason: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Proof of conflict must be attached)

\_\_\_\_\_  
Signature of Requestor  
Phone ( ) \_\_\_\_\_

**Proof of Service**

The undersigned hereby certifies that a true and correct copy of the Motion for Continuance was served on the opposing party/counsel by \_\_\_\_\_ Regular mail or by \_\_\_\_\_ personal service to the following address:

\_\_\_\_\_  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_

OHIO MUNICIPAL COURT

DISMISSAL ENTRY

_____	*	CASE NO. _____
PLAINTIFF	*	
	*	
VS	*	
	*	<b>ENTRY</b>
_____	*	
DEFENDANT		

\* \* \* \* \*

IT APPEARING TO THE COURT THAT THE

- \_\_\_\_\_ 1. First Cause of Action
- \_\_\_\_\_ 2. Second Cause of Action
- \_\_\_\_\_ 3. Both Causes of Action

HAS/HAVE BEEN FULLY COMPROMISED AND SETTLED, THE SAME IS HEREBY DISMISSED.

\_\_\_\_\_  
PLAINTIFF

\_\_\_\_\_  
MARK W. WALL, JUDGE



OHIO MUNICIPAL COURT

Form #3

\_\_\_\_\_  
Plaintiff

-VS-

Case No. \_\_\_\_\_

**LANDLORD AFFIDAVIT  
FIRST CAUSE**

\_\_\_\_\_  
Defendant

STATE OF OHIO  
COUNTY OF BUTLER/WARREN

Now comes \_\_\_\_\_, who is a person who has personal knowledge of the facts contained in this affidavit and being duly sworn states as follows:

1. The Notice(s) to leave the premises required by RC 1923.04 and/or 5321.11 have been given to the tenant and served as required by statute. Copies of said notice(s) are attached to the complaint with evidence of service.
2. The affiant (please check all that apply)
  - is the owner of the property;
  - is the park operator RC 3733.01;
  - is the manager of the rental unit who has the rental records.
3. The premises is (please check one)
  - residential;
  - non-residential;
  - manufactured home park.
4. There is a (please check one)
  - written;
  - oral rental agreement.
 The written agreement is attached to
  - the complaint;
  - this affidavit. The terms of the oral agreement are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

5. The defendant(s) is/are (please check all that apply)
  - in default for payment of rent;
  - in default or violation of the terms of the lease agreement;
  - in violation of RC 5321.05 (A) (9)

FURTHER AFFIANT SAITH NAUGHT.

\_\_\_\_\_  
(Name and Title)

Sworn and subscribed to before me a notary public by \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

OHIO MUNICIPAL COURT

Form #5

\_\_\_\_\_  
Plaintiff

-VS-

Case No. \_\_\_\_\_

**LANDLORD AFFIDAVIT  
SECOND CAUSE**

\_\_\_\_\_  
Defendant

STATE OF OHIO  
COUNTY OF BUTLER/WARREN

Now comes \_\_\_\_\_, who is a person who has personal knowledge of the facts contained in this affidavit and being duly sworn states as follows:

1. The affiant is (please check all that apply)
  - the owner of the property;
  - is the park operator RC 3733.01;
  - is the manager of the rental unit who has the rental records.
2. The premises is (please check one)
  - residential;
  - non-residential;
  - manufactured home park.
3. The defendant(s) is/are (please check all that apply)
  - in default for payment of rent;
  - has/have caused damage to the property that is beyond ordinary wear and tear.
4. The bills, receipts , and estimates for repairs attached to this affidavit are accurate and true statements of the costs to restore the property to its prior condition.
5. The itemized statement attached to this affidavit includes a list of all outstanding claims for rent, late fees and damages requested by the landlord.
6. The total amount of damage requested (including rent, etc.) is \$\_\_\_\_\_

FURTHER AFFIANT SAITH NAUGHT.

\_\_\_\_\_  
(Name and Title)

Sworn and subscribed to before me a notary public by \_\_\_\_\_  
\_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**OHIO MUNICIPAL COURT**

Form #8

\_\_\_\_\_  
**Plaintiff**

vs.

Case No. \_\_\_\_\_

\_\_\_\_\_  
**Defendant**

**MOTION TO EXECUTE  
WRIT OF RESTITUTION**

Now comes the plaintiff(s) and moves the Court to execute the previously issued writ of restitution in this matter.

**HEARING DATE**

\_\_\_\_\_  
**Plaintiff**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**City, State, Zip Code**

**Proof of Service**

Plaintiff served this motion to execute writ on the Defendant/Defendants Counsel by ordinary U.S. Mail on (Date) \_\_\_\_\_ at the address listed in the complaint.

\_\_\_\_\_  
**Plaintiff**

**ENTRY**

For good cause shown, the writ of restitution previously issued in this matter is set for execution on \_\_\_\_\_.

\_\_\_\_\_  
**Judge/Magistrate**

\_\_\_\_\_ Copies provided to Counsel or the parties at hearing

\_\_\_\_\_ Copies sent to Counsel or the parties by ordinary U.S. Mail on \_\_\_\_\_



OHIO MUNICIPAL COURT

Form#4

\_\_\_\_\_  
Plaintiff

-VS-  
\_\_\_\_\_

Case No. \_\_\_\_\_

\_\_\_\_\_  
Defendant

**PRAECIPE FOR EXECUTION  
OF WRIT OF RESTITUTION**

TO THE CLERK:

PLEASE CAUSE THE WRIT OF RESTITUTION PREVIOUSLY ENTERED TO BE  
EXECUTED. COSTS IN THE AMOUNT OF \$50.00 ARE PAID.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Plaintiff/Plaintiff

PHONE NO.: \_\_\_\_\_

# OHIO MUNICIPAL COURT

## SET OUT PROCEDURE

In order to complete a Forcible Eviction Set out, please follow the instructions set out below.

If the defendant does not move out of the property and you want to schedule a set out, you must file a praecipe (included in the landlord/tenant packet) for execution of the writ and pay a FEE OF \$50.00.

The praecipe must be filed on or before NOON on the ninth day from the writ issue date in order to have a set out on Friday, unless it is a holiday or a date otherwise ordered by the Court.

### EXAMPLE:

Eviction Hearing: Tuesday, February 15, Writ is issued  
Court Order requires tenant to vacate by midnight on the following Tuesday, February 22

You must file the praecipe for execution of the writ on or before Thursday, February 24 at Noon in order to have a set out on Friday, February 25.

On Thursday afternoon all plaintiffs will be notified by telephone of the time of the set out on Friday. You must provide the clerk a telephone number when your praecipe for set out is filed in order to receive your scheduled time.

If the writ is issued as the result of a contested hearing, the Court will set a date for set out at the hearing. Enforcement date of the writ issued at a contested hearing will generally be set for a Tuesday afternoon. You still must file your praecipe as soon as possible after the conclusion of the contested hearing. If the writ is for a time period less than 3 days, you must contact the clerk in order to confirm the set out date and to timely file your PRAECIPE.

### Eviction Procedures:

- 1) Normal Eviction – Writ issued, set out scheduled, set out completed (in compliance with the Court order) Court Cost \$50.00
- 2) Writs not executed in a normal timely fashion (over 1 week which is not compliant with the court order) will require a final notice to be served by the bailiff prior to set out.
- 3) Writs that are not executed within 30 days of issuance will be required to file a motion to execute the writ and a hearing will be scheduled before any further action will be taken. Post judgment motion costs \$30.00

**IT IS YOUR RESPONSIBILITY TO CALL THE COURT AND NOTIFY US WHEN THE TENANT MOVES OR IF YOU ARE DISMISSING THE ACTIONS. YOU ARE ALSO RESPONSIBLE TO SUPPLY THE MANPOWER FOR THE SET OUT. IF YOU DO NOT SHOW UP WITH HELP AT THE SET OUT TIME, THE BAILIFF WILL CANCEL THE SET OUT AND YOU MUST WAIT UNTIL THE NEXT FRIDAY. YOU WOULD ALSO BE REQUIRED TO CALL THE CLERK'S OFFICE TO RESET THE DATE AND TIME.**

# NOTICE TO LEAVE THE PREMISES

(For Residential Property Only)

**Form #1**

To \_\_\_\_\_ Tenant:

You will please notice that I/WE want you on or before \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ to leave the premises you now occupy, and which you  
have rented of

\_\_\_\_\_ situated and described as follows: (full address of  
rental)

(Landlord)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

in \_\_\_\_\_, County of \_\_\_\_\_ and State of \_\_\_\_\_

Grounds: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS AS A TENANT, IT IS RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.**

\_\_\_\_\_ Landlord

Date Served: \_\_\_\_\_

Landlord's Address \_\_\_\_\_

\_\_\_\_\_

# NOTICE TO LEAVE PREMISES

(For Residential Property Only)

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vs.

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## MEMORANDUM

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_, I served the within notice on the within names \_\_\_\_\_

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by furnishing a written copy thereof <sup>1</sup>

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1. Write in method of service
    - A) By Certified Mail, Return Receipt Requested
    - B) By handing a copy to the defendant in person
    - C) By leaving it at his (her) usual place of abode
    - D) By leaving it at the premises from which he (she) is to be evicted.
- The notice should be served on the defendant personally, if he (she) can be conveniently found.

## NOTICE OF ABANDONMENT

Form #9

A COMPLAINT FOR FORCIBLE ENTRY AND DETAINER HAS BEEN FILED AGAINST YOU IN A OHIO MUNICIPAL COURT. IF THE ALLEGATIONS STATED IN THE COMPLAINT ARE FOUND TO BE TRUE, YOU WILL BE SUBJECT TO PHYSICAL REMOVAL FROM THE PROPERTY.

WHEN A WRIT OF RESTITUTION IS ISSUED IT WILL CONTAIN A DATE AND TIME BY WHICH YOU MUST LEAVE THE PROPERTY. ANY ITEMS OF PERSONAL PROPERTY REMAINING IN THE SUBJECT RENTAL UNIT, AFTER THAT DATE AND TIME, MAY BE DEEMED ABANDONED BY THE LANDLORD AND THE LANDLORD MAY IMMEDIATELY SECURE THE PROPERTY BY CHANGING THE LOCKS OF THE UNIT.

THE TENANT MAY NOT CLAIM DAMAGE FOR THE LOSS OF PROPERTY NOT REMOVED BY THE DATE AND TIME OF SET OUT.

IF YOU ARE IN DOUBT REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS, IT IS RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.