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Writ of Eviction (Eviction by the Sheriff) - 2021

You do not have to move simply because a landlord says so orally or in writing, or files a Summons for Unlawful Detainer in court. However, if your landlord gives you proper written notice, files a Summons for Unlawful Detainer, goes to a court hearing, gets a judgment of Possession from the court, and gets a “Writ of Eviction” from the court, you almost certainly will have to move.

What is a “Writ of Eviction”?

The Writ of Eviction is the court form (usually on yellow paper) that allows the Sheriff to evict a tenant. Only the Sheriff, or some other law enforcement officer, can make you leave, or put you and your belongings out. Your landlord can not make you leave, or put you and your belongings out.

When can a Writ of Eviction be issued?

If the landlord wins the lawsuit, the judge will issue a judgment of possession. If the landlord asks, the Judge can give immediate possession and allow the landlord to get a Writ of Eviction right away. However, you cannot be evicted until your 10 day appeal period has passed.

If the landlord does not ask for immediate possession, the Writ cannot be issued until the 10 day appeal period has passed. After that, the landlord may ask the court to issue a Writ of Eviction. This goes from the clerk to the Sheriff to the tenant, and authorizes the Sheriff to evict on a specific date. The Sheriff must give you at least 72 hours advance notice of the eviction, and usually gives about 7-10 days.

What happens after the Writ of Eviction is issued?

The Sheriff must take the Writ of Eviction to your home. The Sheriff must serve (legally deliver) the Writ. There are three ways to do this.

- Given to you in person.
- Given to a member of your household. The household member must be 16 or older.

The Sheriff serving the Writ must explain what it is.

- Posted on your front door.

What does the Sheriff do when evicting a tenant?

Usually, the Sheriff will let you gather up a few personal belongings and then make you leave. The Sheriff then will change the locks, or allow the landlord to change the locks, and give you 24 hours to contact the Sheriff to re-enter the premises and remove the rest of your belongings. If you do not remove your belongings within this 24 hour period, they may be considered abandoned.

What if I make payments to the landlord after the landlord gets a Judgment of Possession from the court?

As of July 1, 2019, tenants have a final chance to pay their rent late and stay, which is an extended right of redemption (extended right to pay and stay). Under the extended right of redemption, you can pay the landlord, the landlord's attorney, or the court all amounts owed as of 48 hours before the Sheriff's scheduled eviction date.

All amounts owed means all rent (including a new month's rent if that has come due), all late fees set forth in a written lease (including a new month's late fee if that has come due), court costs, Sheriff's fees, and reasonable attorney's fees (if a landlord's attorney is involved). Payment must be by cashier's check, certified check, or money order. If so, the Sheriff's eviction is cancelled. Confirm with both the landlord and the Sheriff to be sure.

If your landlord rents out five or more units, you may use these rights at any time. Otherwise, these rights can be exercised only once in a 12-month period.

What if I can use this right only once in a 12-month period?

If your landlord rents out four or fewer units, you may use redemption, redemption tender, or an extended redemption only once in a 12-month period. In this case, simply making payments to the landlord after the judgment of possession will not stop the eviction process. The landlord can take your money and still proceed with eviction for up to 180 days after the judgment. You can pay everything you owe after the judgment and be completely current, and your landlord still can evict you. There are two ways to stop this.

(1) If your landlord gives you a nonpayment notice and then accepts rent, the landlord has created a new tenancy. The landlord cannot evict you based on an old judgment ending an old tenancy. To prevent this, the landlord must give you a notice accepting your rent with reservation. This means your landlord is keeping (reserving) the right to evict. This notice must say rent is accepted with reservation and the landlord is not waiving (giving up) the right to evict. If your landlord did not give you this written notice, it may be possible to stop the eviction. If you did not get this notice and still face eviction, get legal help right away!

(2) If you enter a new written lease after the judgment of possession. In this case, it may be possible to stop the eviction. Again, get legal help right away!