

MIDDLETOWN MUNICIPAL COURT
MIDDLETOWN, OHIO

James E. Sherron
Judge

Steven P. Longworth
Clerk of Court

EVICITION PROCEDURES

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 (30 Day Notice) 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 (10th), 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 Praecept for Execution of Writ of Restitution – Form #4).

The same standards apply to evidence requirements at the Second Cause Hearing. The 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 (3RD 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.

*Once a Writ of Restitution has been issued, the Landlord has the option to enforce the Writ. HOWEVER, if the enforcement has been delayed 30 days from the original set-out date, the Landlord **MUST apply by Motion to Execute the Writ**. A hearing will be scheduled to determine if the previous writ may be enforced. No fee will be charged for this first motion to execute. Any subsequent motion will be treated as a post-judgment motion and will require the payment of Court Costs. See form #8.*

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 Praecipe 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

Also attached you will find the Notice of Set Out Procedure and Attorney Representation Requirements.

Disposal of Trash from Set Out

Under Middletown Ordinance § 660.045, the owner of rental property may not permit the accumulation of garbage, litter or rubbish on their property. Owners must also comply with Middletown Ordinance § 1066.051 regarding the disposal or removal of personal property after an eviction.

Rental Property Mattress Disposal Procedures

As you may be aware there is a growing problem in our City with bed bug infestations. Rumpke Waste and Recycling Services (your trash removal service) now requires that all mattress(es) be properly prepared before they are placed outside for removal to minimize the health and safety risks to their employees associated with handling these materials. To prepare these items for pick up by Rumpke, completely wrap and seal each item in plastic. All seams must be sealed shut with duct tape or a similar adhesive. Large rolls of plastic and mattress covers are available at mattress, furniture, and hardware stores. A partial list of local retailers that carry mattress bags is included below.

Rumpke and the City of Middletown realize that not all mattresses are infested. However, the determination of which items are infested cannot be made by visual inspection alone. Given the health risk, the City and Rumpke must proceed as if all items are infested. If mattresses are not taken by Rumpke, the City will issue notice requiring disposal within 72 hours. If disposal is not completed, the City will collect the item(s) in question through a professional service specializing in this type of infestation. The fee to the City for collection and disposal is \$125.00 per item. Under Middletown Codified Ordinance Section 660.045, this fee will be multiplied by 2.5 times and then assessed to the property as a tax lien. Court action may also be taken for non-compliance.

If you have any questions, please contact City of Middletown Community Revitalization at 425-7938 between 8 am and 5 pm.

If you need additional information about bed bugs, please contact the City of Middletown Health Department at 425-1818.

Local retailers that sell mattress bags. Prices are current as of 8/16/10:

- **U-Haul** Twin- \$2.95 Full- \$3.49 Queen- \$3.95 King- \$4.95
2933 Cincinnati-Dayton Rd. 230 S. Verity Pkwy.
513-424-4470 513-425-0689
- **Lovely's Furniture** \$5.00 each
2907 S Main St.
Lemon Township
513-423-0773
- **Sleep Tite Mattress** Twin- \$3 Full- \$5 Queen-\$7 King- \$9
303 Conover Dr.
Franklin, OH
937-746-2556

MIDDLETOWN MUNICIPAL COURT MIDDLETOWN, OHIO

ATTORNEY REPRESENTATION REQUIREMENTS

Several instances have arisen with filings in the Middletown Municipal Court which require clarification.

Effective with all filings on or after January 1, 2004 the following requirements must be followed or the Case will be dismissed by the Court.

Ohio Revised Code Section 4705.01 prohibits any person who is not an attorney from commencing or maintaining an action on behalf of another. Otto v. Patterson, 173 Ohio St. 174 (1962).

The Ohio Civil Rules (Civ. R. 17) requires that the action shall be prosecuted in the name of the real party in interest.

In all of the following situations the real party in interest will be required to be represented by an attorney licensed in the State of Ohio.

1. Fictitious / Trade Name unless the fictitious or trade name is registered with the Secretary of State. Proof of Registration will be required. See ORC 1329.10.
2. Corporations. See Union Sav. Ass'n v. Home Owners Aid, Inc., 23 Ohio St. 2nd 60, (1970).
3. Limited Liability Company. See In re ICLNDS Notes Acquisition, LLC, 259 B.R. 289 (Bank. N.D. Ohio 2001).
4. Partnership. See Hicks Roofing Co. Inc. v Shah, Shah & Patel Inv. Co., No. 88AP-100085, 1989 WL 63323 (Ct. App. Tuscarawas Cty. 1989)
5. Trustee. See Porter v. Mosher, No. 01-CVG-3616 (Mun. Ct. Akron, 2001).

The Court will also not permit a person acting under a Power of Attorney to maintain actions in their name as the Attorney in Fact is not the real party in interest. Testimony may be given by such a representative if the real party in interest is present in the Court Room.

**IN THE MIDDLETOWN MUNICIPAL COURT
MIDDLETOWN, 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____

IN THE MIDDLETOWN MUNICIPAL COURT
MIDDLETOWN, OHIO

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

IN THE MIDDLETOWN MUNICIPAL COURT
MIDDLETOWN, OHIO

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

IN THE MIDDLETOWN MUNICIPAL COURT
MIDDLETOWN, OHIO

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 _____

IN THE MIDDLETOWN MUNICIPAL COURT
MIDDLETOWN, OHIO

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: _____

Plaintiff or Attorney for Plaintiff

PHONE NO.: _____

MIDDLETOWN MUNICIPAL COURT
MIDDLETOWN, OHIO

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 eighth day from the writ issue date in order to have a set out on Thursday, 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 Wednesday, February 23 at Noon in order to have a set out on Thursday, February 24.

On Wednesday afternoon all plaintiffs will be notified by telephone of the time of the set out on Thursday. 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 THURSDAY. 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:
(Landlord)

(full address of rental)

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)

vs.

MEMORANDUM

On the _____ day of _____, _____
_____, I served the within notice on the within names _____

by furnishing a written copy thereof ¹

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 MIDDLETOWN 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.

THE MIDDLETOWN MUNICIPAL COURT

MIDDLETOWN, OHIO

DISMISSAL ENTRY

_____ * CASE NO. _____
 PLAINTIFF *
 *
 VS *
 * ENTRY
 *
 _____ *
 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

JUDGE/MAGISTRATE