LANDLORD'S EVICTION KIT:

LANDLORD'S GUIDE TO EVICTIONS IN OHIO

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OUR VIDEO GUIDE TO FILLING OUT A THREE DAY NOTICE

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Disclaimer

Please understand that by ordering this eviction kit, you are not retaining a lawyer for legal advice, nor are you retaining the services of neither Andrew J. Ruzicho II nor Eric E. Willison. This kit is provided to you for informational purposes only. Further, please understand that the information in this kit is specific to the State of Ohio, and that the laws of other states may vary quite a bit from Ohio's laws. Using this kit to file a case outside of Ohio is a bad idea.

Nothing in this kit is a substitute for retaining an attorney to work on your case. It is recommended that you seek out an attorney rather than trying to perform an eviction yourself. However, if you cannot find an attorney to work for you, then the information

herein may be of some assistance to you regarding proceeding with such an action and the format for filing a case.

I. Introduction

There are two types of evictions a landlord may conduct against his residential tenants in the State of Ohio. One is the lawful process of eviction as set out in Ohio Revised Code Section 1923, and the other is an informal (as well as illegal) or "self help" eviction, which will get the pants sued off of the landlord if the tenant knows his or her rights. In fact, there is a special statutory section in the Ohio Landlord Tenant Act, Ohio Revised Code Section 5321.15 specifically forbidding not just "self help" evictions, but even threats of "self help" evictions, as well as cutting off utilities and threats to cut off utilities. Landlords would be best advised to understand the *legal* eviction process and follow it carefully. A clause in the lease allowing the landlord to take immediate possession upon a breach of the lease agreement will not be enforceable in Ohio. Landlords must go through the court system to legally evict a tenant and cannot lock out a tenant or remove a tenant's possessions without getting a court ordered eviction.

Another thing to keep in mind is that this guidebook only applies to tenants and landlords in a *residential* rental agreement relationship with each other. While evictions of business tenants in commercial property can be accomplished under these procedures (and in fact, they should be accomplished under these procedures to remove certain legal counterclaims by such commercial tenants), it is not strictly necessary to do a commercial eviction in the manner herein described.

Further, schools providing dormitory space to their students are not required to follow the processes in this kit.

II. Breach of Lease Agreement or End of Right To Possession

The first thing that must occur before a landlord may initiate an eviction under the legal process in Ohio is that there must be a breach of the rental agreement or an end to the right of possession by the tenant. Examples of a breach of the lease might be the tenant's failure to pay rent, having an unauthorized pet or other occupant, or damage to the premises. Examples of the end of the right to possession would be the ending of the term of the lease agreement without an agreement to renew, or that the landlord has decided to end a month to month tenancy. In any case, this triggering event is the first thing that occurs in the eviction process

III. Three Day Notice

A. Three-Day Notice Required to Be Posted Before Court has Jurisdiction

Once the triggering event has occurred, every eviction should begin with a three-day notice to vacate. The three-day notice to vacate tells the tenant what the problem is

and indicates that you (the landlord) may proceed with an eviction proceeding against the tenant. The notice is a prerequisite to the eviction proceeding. Without receipt of it, the tenant can defeat the eviction proceeding because the court is without jurisdiction to hear the case in the absence of a properly served three-day notice to vacate.

B. Contents of the Three-Day Notice

We have put together a form to be used with this kit based upon three-day notices that have been successfully used to evict tenants in other court cases. The three-day notice should identify the premises the landlord seeks vacated, it should have on it the date that it was posted and the day that the landlord wants the tenant out by. But most importantly, there is a certain amount of statutorily mandated language which must not only appear on the face of the three day notice, but the text of the language must be conspicuously set off from other language in the notice. This language is as follows:

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.

Some landlords try to save money and either create their own forms or borrow these forms from others and make the mistakes of either not including this language or failing to conspicuously distinguish this language from the rest in the notice. Fail to do this and the tenant can defeat your eviction action by arguing that the absence of the statutorily mandated language (in conspicuous text) removes the court's jurisdiction to hear the matter. If this occurs then the landlord will have to start the eviction process anew by posting a corrected three day notice on the tenant's door and then filing a new eviction complaint with the court (including another filing fee charge).

C. Common Tenant Misunderstandings About Three Day Notices

1. Three-Day Notice as Actual Eviction

Many tenants mistake the three-day notice for an **actual eviction** and assume that they must leave within the time frame specified on the three day notice. In other words, tenants believe that they must vacate within the three day period indicated on the notice. This is not the case.

Naturally the tenants are very worried about the short time frame to find another place to live. They feel that it is unfair that the landlord can force them out in such a short amount of time when they have not had a chance to have their side of the story heard.

Landlords are generally interested in getting the eviction process completed in as short a time as possible, and it is a good practice to immediately serve the three day notice when an issue such as nonpayment of rent arises. By doing so, the landlord

preserves his ability to go to court at the earliest moment if the situation is not resolved. In other words, don't wait to post the three day notice if there is a lease violation warranting an eviction action. Every day that you lose will cost you money.

You cannot file an eviction complaint until the three day eviction notice has expired. The three day notice cannot expire if it is not posted. The clock only begins to run once the three day notice has been posted on the tenant's door.

2. Eviction as Absolution

Tenants also assume that they no longer have to pay rent for that month and any following months because the landlord ordered them to leave their apartment. While there used to be case law to support this idea (the case of Cubbon v. Locker (1982), 5 Ohio App.3d 200 in the Second Appellate District reasoned that the landlord, by choosing eviction, had selected his remedy and he ought not be able to recover damages as well), these assumptions are now legally untenable. **The Ohio Supreme Court has since ruled that landlords who seek eviction are not barred from pursuing damages for lost rental amounts under the lease agreement.** Dennis v. Morgan (2000), 89 Ohio St.3d 417.

This means that you can have your cake and eat it too (unless you re-rent the premises for the same or more rent than the original tenant was paying). You can evict the tenant and the tenant would still owe you for rent through the remainder of the lease unless you re-rent the premises prior to the end of the evicted tenant's lease. And as a landlord, you have an obligation to make reasonable efforts to re-rent the premises after an eviction.

One way to disabuse tenants of the confusion regarding their obligation to continue to pay rent on the rented premises until it is re-rented would be to insert a clause in your three day notice indicating that the tenant is responsible for any unpaid rent and all rents agreed to as specified in the lease. This language often clears up any misunderstandings as to the tenant's obligations after receiving the three-day notice.

D. Common Landlord Misunderstandings about Three Day Notices

1. How to calculate the three day notice period

When calculating the three-day period outlined in the landlord's three-day notice to vacate, landlords often make the mistake of including weekends and holidays in their count. If there is any day that the court is not open during the three day notice period, then these days should not be counted. Neither should the first day that the notice is hung be counted, but the last day may be counted.

Allow me to try to simplify by way of example. If the landlord hangs his notice on a Thursday morning in January, he will not be able to count that Thursday as one of

the three days, even if he hung the notice at 12:01 a.m. (the very first minute of that Thursday). The first day for calculation purposes would be Friday.

Saturday and Sunday would not count toward the three days, as the court is not open on these days.

Lastly, let's assume that the Monday following that weekend happens to be Martin Luther King Day. Since the Court is not open on this day, then this day won't count either. So Tuesday and Wednesday after the holiday count toward the three day calculation, and the landlord can finally file the Forcible Entry and Detainer Action (more about this below) on Thursday.

Filing the eviction before Thursday removes the court's jurisdiction to hear the eviction action and you will have to start all over again.

To sum up, you do NOT count the day you posted the three day notice to vacate.

You do NOT count weekends and holidays as part of the three days.

If you file your eviction action prior to the expiration of three day notice, the court will not be able to hear your case. You will have to re-file the case as a result and incur additional filing fees. Courts do not refund filing fees because you made a mistake.

2. Service of the three day notice is best done by posting on the door

The Ohio eviction statute does allow for service by certified mail, return receipt requested, or by personally handing a copy to the tenant, or by leaving it at the tenant's usual place of abode or at the rental premises (posting to front door). Many out-of-state landlords attempt to serve the three day notice by sending it via certified mail as this may seem much easier than handing it to the tenant in person or posting it to the door.

Certified mail delivery of the three day notice is more often than not a waste of time as the tenant generally will not sign for the letter. You may waste a good five or six days waiting to find out whether the tenant signed for the certified mailing or not. You are better off having someone post it on the front door even if that means hiring someone to do so. Please note also that emailing a copy of the three day notice is not legally sufficient.

3. Not just any three day notice is legally sufficient in Ohio

You may find a "free" three day eviction notice elsewhere on the internet but it must contain the statutorily required language (set off from the other language within the notice) to be legally sufficient.

4. Landlord has option to accept rent or continue with eviction

Many landlords ask whether they have to accept rent after the three day notice has been posted. If the tenant is late on rent at the time the notice is served, landlords have the option to accept rent and forego their ability to proceed with an eviction or they may decline rent and continue on with the eviction. Although it may seem like most landlords would accept the rent if offered by the tenant, some landlords have had enough of constant late payments and would rather start fresh with a new tenant.

E. Service of Process

An eviction is a legal action. In Ohio, you cannot sue someone in secret. You have to give your opponent notice that a case has been filed against that party so that party can go to court and put up a defense if they have one. This is only natural. The process of putting your legal opponent on notice that he is being sued is called Service of Process and there are very definite rules for accomplishing it properly.

Service of Process issues can be frustrating, because some defendants in lawsuits do not want to be served with process. They duck the service of process so that they can later claim that since they had no idea they were being sued, the court had no personal jurisdiction over them (making any award against them a nullity).

1. Degrees of Service of Process

If the other side is trying to avoid service of process, the best thing to do is to have a video tape of someone putting a copy of the lawsuit into the defendant's hands and then showing it to the court. But this is a very difficult thing to do, and courts recognize that they will not always have definitive proof regarding the matter. In one case I recall from law school, there was a defendant holed up in a posh New York City Hotel, who had instructed the doorman not to let the process server into the building. This defendant refused to leave the hotel because of the possibility of service.

The enterprising process server learned which room the person was staying in, found the window for that room, wrapped the lawsuit's papers around a rock, and threw it through the window. This was considered good service of process by the court (though the process server had to pay for the damage to the window). In divorce cases, it is not uncommon for attractive young female process servers to approach men in bars, and then break out the service of process papers.

Thankfully, it is not often necessary to go to these extremes in eviction cases. Ohio Revised Code § 1923.04(A) provides several methods of serving the three-day notice upon the tenant. A landlord may send it in several ways:

1. via certified mail, return receipt requested;

2. may deliver it to the tenant in person;

3. may leave it at the tenant's usual place of abode (normally done by posting it to the front door); or

4. by leaving it at the premises of which the landlord is attempting to regain possession (normally done by posting it to the front door).

Posting the notice to the front door of the rental premises is the most common method used and eliminates problems with the tenant refusing delivery of the certified mail as well as with delivering the notice in person to the tenant and risking tempers flaring.

The trouble with this posting method is that if the tenant contests that the notice was ever put on the door, then the person later conducting the eviction hearing (magistrate judge) has to make a factual determination as to who is telling the truth. In my experience, the Magistrate usually believes the landlord on this particular matter, but it might be a safe practice to take a picture of the posted three-day notice with a newspaper held under the notice so that the headline date is visible.

IV. Forcible Entry and Detainer Action (Eviction Action)

Often, the tenants will vacate the premises after receiving the three day notice to vacate. If they do not, then the landlord must make a decision as to whether he is really serious about going through with the eviction.

The next step in the eviction (if the tenant has not left after the three-day notice to vacate has expired) is to file a Forcible Entry and Detainer Action with the Court. A Forcible Entry and Detainer Action is just a fancy way of saying an eviction action. In Ohio, these actions are most commonly brought in Municipal Court, but if your area does not have a Municipal Court, then it will be filed in the Court of Common Pleas. A sample of a Forcible Entry and Detainer Action is included in this kit.

A. Filing Fees

An important consideration in the eviction process is the landlord's out of pocket expenses which often include attorney's fees and court costs. At the time of publication (January 2012), Franklin County charges a $127.00 filing fee (which includes bailiff and ordinary mail service of the summons and complaint upon the tenant), $35.00 fee for a Writ of Restitution (also known as a red tag, more about this later), and a $45.00 set out fee. If you are in another Ohio county, consult with that county's clerk of court to determine all fees involved in the process. Many courts have their current filing fees listed on line. For example, Franklin County posts a list of their filing fees at the following web address: http://www.fcmcclerk.com. I recommend doing a search online to find your county court and reviewing any information they have on the web site concerning eviction actions. I listing of Ohio county courts with online records appears at this link, http://ohiolegalforms.net/2011/04/02/ohio-courts-with-online-court-records/.

Generally, eviction filing fees from county to county are similar to those charged in Franklin County. Some courts may charge additional fees for each defendant beyond the first. Other courts may also charge extra for complaints that seek money damages against the tenant (second cause of action) in addition to the eviction action.

It is important to make certain that the address of the tenant is correct on the complaint. Franklin County service bailiffs refuse to serve a summons and complaint to an address that does not exist. For example, a simple mistake like listing the address as Graceland Avenue instead of Graceland Boulevard can result in the bailiff refusing to serve the summons and complaint upon the tenant. An incorrect zip code can lead to the same result, and I have met many landlords who did not know the correct zip code for their rental properties. You can always double check addresses and zip codes using the postal services web site at http://www.usps.com. A simple address mistake can easily cost a landlord another $76.00 or more in addition court fees (amended complaint filing fee and additional service fees).

Occasionally, mistakes occur in determining in what county a rental unit can be found. New rental managers may assume the rental property is in a certain county when, in fact, it is located in the neighboring county. Evictions must be filed in the county where the rental property is located. If you file in the wrong county municipal court, that court will not have jurisdiction to hear your eviction case. Performing a property search at the county auditor's website is an easy way to double check whether the rental unit is located in that county.

As you can see, evictions are not inexpensive. Couple the court costs with attorney's fees and the landlord can easily wind up paying $500.00 or more dollars to complete the eviction process.

B. Duration of the Typical Eviction

In Franklin County the timing of a typical eviction is as follows (smaller counties may move faster on evictions):

February 10 – three day notice posted;
February 18 – filing of complaint;
March 11 – hearing date;
March 13 – red tag issued;
March 18 – bailiff scheduled to oversee set-out.
March 20 – set-out conducted

The lesson here is to act fast because an eviction from start to finish can take over a month.

C. Tenant Delays

The tenant can delay the eviction process, but not indefinitely. The most common ways to delay are outlined below

1. Contesting Service of Three Day Notice

Often, attorneys attend eviction hearings alone, hoping that the tenants will not show up and contest the eviction. Even if the tenant does attend the hearing, the tenant may admit that he received the three day notice and failed to pay rent. In such cases, the landlord wins. If the tenant does bring up the issue of three day notice service, the attorney is never the person who hung the three- day notice to vacate upon the door. The attorney cannot act as a witness in the case and therefore cannot testify that the three day notice was posted, when it was posted, whether the tenant was behind in rent at the time, *etc*. If the tenant contests receipt of the three day notice, then the attorney will need to bring in the person from the landlord's office who posted the notice to testify that it was indeed posted, and done so on the time specified in the notice. This usually forces the landlord's attorney to continue the matter until the next date that the court is doing eviction hearings so that evidence can be introduced on this matter.

Smart attorneys will obtain an affidavit from their landlord clients in which the landlord has sworn under oath that he posted the three day notice, the tenant was behind on rent at the time the notice was posted, the tenant is still behind on rent as of the hearing date, and the tenant still occupies the premises. Courts may accept this affidavit testimony in lieu of live testimony. Other courts may still require live testimony if the tenant contests any material facts of the eviction.

Despite all this, I have seen cases in which the attorney has served the three day notice and is sworn in to testify that he/she did serve it.

2. Asking for Time for an Attorney

Tenants will also sometimes seek a continuance, arguing that they have not yet had time get an attorney to understand their legal rights. The court may not grant the request for a continuance. In my experience in Franklin County, the tenant usually gets a one week continuance upon making this request, but is warned that no further continuances past this date will be granted. If the court does grant the tenant's request for a continuance, the duration of the continuance is dependent upon the court's schedule but generally does not extend beyond one week past the original hearing date. The court may not give a decision immediately at the hearing, and the landlord may have to wait a week or two for a decision or perhaps longer.

3. Attempts to Transfer Case

Some tenants will even try to transfer the case to another court system (such as the federal court, alleging civil rights violations) in a frivolous attempt to string out the proceedings. Upon a motion to transfer to federal court, the state court temporarily loses jurisdiction until the federal court remands the matter back to the state court which it

invariably does under what is called the "well pleaded complaint rule" meaning that the plaintiff is the master of his complaint as far as the selection of the forum (court) in which it is filed, and a defendant may not invoke federal jurisdiction in a case merely by pleading counterclaims sounding in federal causes of action. By the way, that mouthful of legal terminology is more for your attorney to understand than you, for, in the rare case where a tenant tries to get the case to federal court, you need to hire an attorney. Show him that language about the well-pleaded complaint rule and it will save him a lot of research time on your case.

D. Service of Process of the Eviction Action

Once you have filed your eviction action against the tenant, then the clerk of courts will serve the tenant with a copy of it, along with a summons page, informing the tenant of when the hearing has been set, and advising him to show up and argue his position at that time and date. Service of Process rules for evictions are presently more relaxed under Ohio law than for other complaints, and allow the clerk to merely post the papers on the door, just like the three-day notice to vacate.

1. Problem with Second Cause of Action

This process of posting the eviction action on the door works well for evictions, but often the eviction is joined by a second cause of action for lost rent, late fees, unpaid utilities, damages to the premises, *etc.* (more about this later). In effect, the landlord is attempting to save time by joining the action for possession of the premises with an action for his damages for unpaid rent. This is perfectly permissible, but if the only service of process accomplished in the case is by posting the eviction action on the door, then the second claim for relief for lost rents will not be properly served (as there is no statutory exemption for service of process via posting to the tenant's door for a money damages action). Thus while the court will have jurisdiction to hear arguments over who is entitled to possession of the premises, the court will not have jurisdiction to award money damages to the landlord for unpaid rent until the second cause of action is properly served upon the tenant.

To avoid this problem, you may wish to specify service of process by certified and regular (in case the tenant refuses to sign for the certified letter) mail at the outset. Often ordinary mail service is included with bailiff service as part of the original filing fee.

E. Other defendants besides tenant(s)

1. Cosigners

If the landlord had the foresight to require a cosigner(s) on the lease, then he has the option of proceeding against the cosigner in the second cause of action for money damages. A landlord can proceed against the cosigner by naming him or her as a defendant and indicating on the complaint that he is proceeding against the cosigner as to

the second cause of action only. The cosigner will have to be served by means other than posting on the cosigner's door.

The landlord may also proceed against other tenants on the lease although only one of the tenants did not pay rent or committed a lease violation. This results from joint and several liability or the "Three Musketeers rule" - "All for one and one for all." This means that each tenant is liable for the total damages even if that tenant did not cause the claimed damages.

For example, one tenant may have always paid his portion of the rent; however, the second tenant failed to pay his half of the rent for several months. Even though the first tenant always paid his portion, he is still liable for the second tenant's unpaid rent. Unpaid rent and other damages by one tenant are attributable to all of the tenants no matter whose fault those damages were. In such cases, service of process must be perfected on the tenant(s) sued by means other than posting it to the door.

2. All other occupants

For the eviction action, the landlord will want to name as defendants, all other occupants residing at the premises that are 18 years of age or older. The tenant may have invited others to live with him. The landlord should name these individuals as well even if none of them is listed on the lease. The landlord will want the eviction action to be effective against every occupant at the premises. If the names of the other occupants are unknown then list the names of the tenants that you do know as defendants and then add "And all other occupants" to the defendants on the eviction complaint. Minors typically do not need to be listed as defendants if you have added the "all other occupants" language.

Despite situations in which the landlord is unaware of identities of all other occupants at the rental premises, some courts may charge you for at least one extra defendant if you include the "and all other occupants" language on your complaint. Other courts may require you to strike such a non-entity from your complaint. The vast majority of courts do not have a problem with that language. If you are unlucky enough to have rental property in a jurisdiction where the court is offended by such language, you may pay more to have such language or may be forced to remove it from the complaint entirely.

V. Defenses To Eviction Actions

A. Problems at the Rented Premises

Tenants' favorite defense is to begin listing off all the problems that existed at the premises during the eviction hearing. This has no relevance at the eviction hearing and the landlord does not have to address these arguments.

While tenants have multiple remedies if the landlord is not accomplishing his duties under Ohio Revised Code Section 5321.04 or is breaching some aspect of the lease agreement himself, normally, a tenant will not have followed the proper procedure in such situations. If conditions exist at the premises posing a threat to the health or safety of the tenant then the tenant must inform the landlord in writing of the problem (note, some courts even require that this writing be served by certified mail).

After informing the landlord in writing, the landlord has the lesser of 30 days or a reasonable amount of time depending on the particular problem to correct it. If the landlord fails to do so within that time period, the tenant may place the rent in escrow (provided they are current on rent) with the clerk of courts; sue to force you to make the repairs; or if the conditions warrant, terminate the tenancy. The only time that problems at the premises are relevant is when the tenant has followed this procedure and placed the correct amount of rent in escrow at the appropriate time.

In such situations, the court will ask the tenant whether he put the rent in escrow. If not then the court usually cuts off any further discussion of unrepaired problems at the premises.

B. Accepting Rent After Posting the Three-Day Notice to Vacate

Once the landlord has posted the three-day notice to vacate, he cannot accept any future rent. Acceptance of past due rent after the three day notice has been posted is fine, but rent for any time after the three-day notice has been posted will waive the three-day notice, thus removing jurisdiction from the court to hear the proceedings.

To illustrate by way of example, let's say the current month is March and rent was due on the first of the month. It is now the seventh of the month and the tenant has not paid rent for March yet. On the seventh of March, the landlord posts the three-day notice to vacate. The tenant comes later that day and offers to pay the rent but not late fees. The landlord accepts the rent. Can the landlord maintain the eviction action against the tenant at this point?

The tenant can now argue that he has paid rent through the end of the month and is, not only current on rent, but has paid future rent (future rent in this case equals rent for days that after the date of payment). Furthermore, the tenant may argue that the landlord waived late fees by accepting the rent without them and by not demanding them at that time. The landlord may argue that the rental obligation for March had already become due, thus making his acceptance of rent for the month of March an acceptance of past due rent. But why get into this argument? If the landlord just does not accept any rent after posting the three-day notice then he will not have to worry about this defense or the court ruling against him on his eviction action.

A far clearer example of accepting future rent would be where the landlord posts the three day notice on March 15 after discovering an unauthorized animal at the premises, waits the appropriate time, and then files the eviction action. When April 1

rolls around, if the landlord accepts money for April's rent, then this is a complete defense to the eviction action as the court will find the landlord to have accepted future rent.

It is often hard to turn down money from a tenant. But if the landlord is serious about maintaining the eviction action and removing the tenant, these amounts must not be accepted. Most landlords refuse to accept any amount other than the full amount owing to resolve an eviction. Once an eviction has been filed, most landlords have already determined they no longer want the individual as a tenant and will not accept any money prior to the eviction.

The seminal case on a landlord's acceptance of future rent as a defense to the eviction is the cases of Associated Estates Corp. v. Bartell (1985), 24 Ohio App.3d 6; and Presidential Park Apartments v.. Colston,1980 Ohio App 4819 (March 20, 1980) Franklin Co. App. No. 79 AP 604, unreported. The seminal case on a landlord's acceptance of past due rent as not being defense to the eviction is the case of Graham v. Pavrini (1983), 9 Ohio App.3d 89.

1. What Constitutes "Acceptance"?

If the tenant drops off future rent in a night drop box or mailed the future rent in after the landlord has posted the three-day notice on the door, there are cases which say that so long as the landlord has not cashed the check and returns it to the tenant at the hearing, then this is not acceptance. But if the tenant gets a receipt for cash from a secretary (who perhaps was not aware of the eviction) at the landlord's rental office, then this will very likely be ruled as acceptance of future rent. So the wise landlord establishes procedures for accepting rent to guard against this eventuality. Some tenants have even gone so far as to find out who actually owns the property (since the rental manager and the owner are both considered landlords under the Ohio Revised Code's Landlord Tenant Act of 1974) and mail the check to the owner. If the owner cashes the check, and the check is for future rent, then this will be a defense to the eviction.

2. Unusual cases

It is becoming more and more common for the landlord to require the tenant to deposit rent into the landlord's checking account or other account designated for the purpose of rental payments for the property. This practice eliminates " the check's in the mail" or "the check got lost in the mail" response to a landlord's query concerning the location of the rent. It also eliminates any dispute over when the rent was placed in the mail. Many tenants fail to realize that a letter placed in the mail after collection hours on Saturday does not usually get postmarked until the following Monday. A landlord can simply go online and sign in to his bank records and see exactly when the rent deposit was made and for how much. Tenants generally understand that a bank has specific hours of business.

The disadvantage to this practice is that tenants can make a deposit at any time after the rent is late and argue that the landlord accepted it. If the landlord wishes to proceed with an eviction, he should return the funds via certified mail, return receipt requested. A wily tenant may wait until the day of the hearing to make such a deposit, and the landlord may not know that the deposit was made until the tenant produces the deposit receipt at the eviction hearing. Most landlords will not be prepared to refund the money on the spot and will have to postpone the hearing in order to do so.

I have also been involved in cases where tenants have created copies of falsified money orders, cashier's checks and delivery receipts. In one case, I had to have a bank perform a search on a cashier's check to determine that it was invalid. Occasionally you will run into tenants who have been through the system many times and, at the very least, will cause headaches and delays because of their shenanigans.

C. Waiver Doctrine

Even though your rental agreement says something in clear language, if, after the rental agreement was signed, the parties acted in a way that was different from the express terms of the rental agreement, then there may be an issue of waiver. The reason for this is that evictions are an equitable action, and courts require a person seeking an equitable remedy to act in a blameless manner as far as the cause of the problem.

For example, your rental agreement might say that the rent must be paid by the end of the first day of each month, and that failure to pay the rent by the first day of each month will give the landlord the right to start eviction proceedings. On the first month, the landlord accepts the rent four days late. On the second month, the landlord accepts the rent eight days late. The third month, the rent is paid on time, but then on the fourth month, the rent is five days late. This course of conduct continues on for several months. On the eighth month, the rent is two days late, and the landlord starts eviction proceedings.

The tenant will be able to come into court at the eviction hearing and argue that the landlord has no right to evict him for paying the rent late. The landlord will read the language of the rental agreement giving him that very right. But the judge will look at the landlord's actions (usually established by canceled checks produced by the tenant) and find that there was a course of conduct established between the parties that led the tenant to rely upon it. The landlord's actions in constantly failing to insist on strict enforcement of the rental agreement's terms lulled the tenant into a false sense of security in making payments a few days late. Thus the landlord will not have the right to strict enforcement of the rental agreement's terms in this regard. In other words, a landlord's acceptance of late rent on several occasions can override the terms of the lease agreement, and the tenant can justifiably pay the rent a few days late without fear of consequences.

In the case of Lauch v. Moning (1968) 15 Ohio App. 2d 112, the First Appellate District Court held as follows:

> Summarizing defendant's assignments of error defendant claims that a course of dealing in accepting overdue rent had been established between the parties whereby the plaintiff had waived any right to claim forfeiture for late payment of the rent installments without giving the defendant advance notice of his intention to require strict compliance with the terms of the lease. That is the well settled law of Ohio. See Bates & Springer, Inc., v. Nay, 91 Ohio Law Abs. 425, and Milbourn v. Aska, 81 Ohio App. 79, and authorities in each case cited. The undisputed evidence here establishes that the defendant was entitled to the protection of this rule of law. Id. At 113.

How many months does it take to sufficiently establish this course of conduct? It depends on the judge.

1. Methods to Defeat Waiver

The landlord can defeat the effects of waiver in two ways. He can send a letter of strict compliance. In the letter, he will say something like: "Dear tenant, I know that in the past, I have accepted the rent late. Those days are now over, and in the future, I will insist upon prompt payments of all rental amounts as soon as they are due under the terms set out in our rental agreement, and if they are late, I will exercise all of my rights under the lease." This puts the tenant on notice that the past course of conduct will no longer be the rule. Once the tenant receives this letter, no judge is going to allow the tenant to assert the waiver argument on the next late payment.

2. Anti-Waiver Clauses in Rental Agreement

These clauses say something like: "No course of conduct between the parties shall be relied upon if it is in conflict with the provisions of this rental agreement. No course of conduct on the part of either party shall be deemed a waiver by the other of any term or condition of this lease."

The problem with these clauses is that they are a restriction upon an individual's freedom to contract. Remember that there are two types of contracts, express contracts (by words, whether written or oral) and implied contracts (by deeds or actions of the parties). A landlord's consistent waiver of an express term of the rental agreement can be seen by the Court as creating a new implied contract. In other words, a landlord's continued acceptance of late rent can override the terms of the lease agreement requiring payment on a certain date.

Whether the Court will enforce the anti-waiver provision is dependent upon certain factors. One Ohio Court has addressed the enforceability of anti-waiver provisions, but not in the context of landlord tenant law. However, the wording below is a strong argument against anti-waiver clauses in landlord/tenant law by analogy. The

Seventh District Court of Appeals in Belmont County stated in the case of Van Dyne v. Fidelity-Phenix Ins. Co. (1969), 17 Ohio App.2d 116, as follows:

> An insurance company cannot, by a nonwaiver provision in its policy, disable itself from subsequently modifying its own contract, or prevent its future conduct from having the force and effect which the law says it shall have. Attempts of parties, including insurers, to tie up by contract their freedom of dealing with each other are futile, and such a nonwaiver provision does not prohibit or limit the company issuing the policy, or its duly authorized agent, from subsequently entering into a valid oral agreement with its insured, modifying the policy's terms. Coletta v. Ohio Casualty Ins. Co. (Court of Appeals, Summit County, 1953), 96 Ohio App. 70 (see paragraphs two and three of the syllabus, and pages 77, 79, 80, 81 in the opinion); Union Mutual Life Ins. Co. v. McMillen, 24 Ohio St. 67; 30 Ohio Jurisprudence 2d 703, 704, Sections 765, 766. Id. At 123-124.

If an insurance company cannot preclude a waiver of its contract by its actions that follow the contract in time, a landlord may not be able to do so. Also, the language above, which says "attempts of parties, including insurers" speaks to parties to contracts in general as well as insurers in particular, and so further indicates that the rule applies to all.

D. Lack of Thirty-Day Notice To Cure

The Ohio Landlord Tenant Act of 1974 imposes certain duties upon tenants pursuant to Ohio Revised Code Section 5321.05. If a landlord seeks to evict a tenant because of violation of one or more of these duties, the landlord must provide a written notice to the tenant giving the tenant 30 days to cease and desist from continuing to be in violation. In other words, the landlord must give 30 days' notice to the tenant to get his act together before proceeding with an eviction. Only after the tenant has failed to get his act together after the 30 days' written notice may the landlord bring an eviction action. Many landlords attempt to make these obligations part of the lease in an effort to avoid the 30 day notice obligation; however, making the obligations part of the lease will not waive the 30 day notice requirement.

This statute is reprinted directly below.

§ 5321.05 Obligations of tenant.

(A) A tenant who is a party to a rental agreement shall do all of the following:

(1) Keep that part of the premises that he occupies and uses safe and sanitary;

(2) Dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner;

(3) Keep all plumbing fixtures in the dwelling unit or used by him as clean as their condition permits;

(4) Use and operate all electrical and plumbing fixtures properly;

(5) Comply with the requirements imposed on tenants by all applicable state and local housing, health, and safety codes;

(6) Personally refrain and forbid any other person who is on the premises with his permission from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance, or other part of the premises;

(7) Maintain in good working order and condition any range, refrigerator, washer, dryer, dishwasher, or other appliances supplied by the landlord and required to be maintained by the tenant under the terms and conditions of a written rental agreement;

(8) Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;

(9) Conduct himself, and require persons in his household and persons on the premises with his consent to conduct themselves, in connection with the premises so as not to violate the prohibitions contained in Chapters 2925 and 3719 of the Revised Code, or in municipal ordinances that are substantially similar to any section in either of those chapters, which relate to controlled substances.

(B) The tenant shall not unreasonably withhold consent for the landlord to enter into the dwelling unit in order to inspect the premises, make ordinary, necessary, or agreed repairs, decorations, alterations, or improvements, deliver parcels that are too large for the tenant's mail facilities, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(C) (1)If the tenant violates any provision of this section, other than division (A)(9) of this section, the landlord may recover any actual damages that result from the

violation together with reasonable attorney's fees. This remedy is in addition to any right of the landlord to terminate the rental agreement, to maintain an action for the possession of the premises, or to obtain injunctive relief to compel access under division (B) of this section.

(2) If the tenant violates division (A)(9) of this section and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(I) of section 1923.02 of the Revised Code, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in that division, then the landlord promptly shall give the notice required by division (C) of section 5321.17 of the Revised Code. If the tenant fails to vacate the premises within three days after the giving of that notice, then the landlord promptly shall comply with division (A)(9) of section 5321.04 of the Revised Code. For purposes of this division, actual knowledge or reasonable cause to believe as described in this division shall be determined in accordance with division (A)(6)(a)(I) of section 1923.02 of the Revised Code.

If one of these duties is breached, then the landlord must give the tenant a thirty-day notice to cease and desist from the violations of Revised Code Section 5321.05. If the tenant does not cease the violations within 30 days, then the landlord can hang a three day notice to vacate the premises and proceed as above under the eviction statute. (A thirty day notice is contained at the end of these materials.)

For example, let's say that the lease allows for pets, but that the tenant does not clean up after his pets, and they make the apartment unsanitary. Since the tenant has a duty to keep the apartment in a clean and sanitary condition, then the landlord must send the tenant a 30 day letter advising the tenant to clean up the problem. If the problem persists after the 30 day period, then the landlord has the right to hang the three day notice on the door and go from there. It is important to note that there are some court decisions which allow the 30 day notice and the three day notice to be served together, even in the same document. It may be best to serve the three day notice after the 30 day notice has expired.

But if the violation the landlord complains of is merely a violation of the lease terms, rather than a violation of Ohio Revised Code Section 5321.05, then the landlord does not have to deliver a 30 day letter. Instead, he can simply hang the three-day notice to vacate and that is that. For instance, there is no provision in Ohio Revised Code Section 5321.05 requiring that the tenant pay rent. That is a lease obligation. If the tenant fails to pay his rent, no 30 day notice is required, and the eviction may proceed upon the three-day notice posted by the landlord.

E. Retaliatory Eviction

Ohio Revised Code Section 5321.02 states that if a tenant complains about conditions at the rental premises, or engages in acts of organizing other tenants, then the landlord cannot use this as a reason to evict him. Thus if the tenant can show evidence that he is being evicted because he complained to the City Code Inspectors about the poor conditions at the apartment, and the court believes that this is really the reason the landlord seeks to have him out, rather than the landlord's stated reason that the tenant is loud and noisy, then retaliatory eviction is a valid defense to the eviction action.

F. Equitable Defenses

Since eviction is an equitable action, the court will not exercise its power to act in such a matter unless the cause is just. There is an old saying in law that "Equity abhors a forfeiture" (meaning a forfeiture of leased premises).

A good example of this defense comes from one of the big cases, Zanetos v. Sparks Realty (1984),13 Ohio App. 3d 242. In that case, the tenant ran a bar in the rented premises. The owner of the building sold it to another person, but the tenant was never informed of the sale. The tenant continued to pay the rent to the previous owner and the new owner tried to evict the tenant for late rental payments. The court held that in these circumstances, it was not proper to evict the tenant.

Another example comes from the case of Northlake v. Barrett, 1986 Ohio App. LEXIS 9814 (December 8, 1986) Montgomery Co. App. No. 9699 (unreported), the tenant reported that her purse containing her welfare check had been stolen, making it impossible for her to pay her rent on time. She later offered to pay the rent in accordance with an oral understanding with the landlord, but the landlord refused to accept the money since he had already filed an eviction. The Court held that:

> The non-payment of rent does not necessarily constitute "good cause" for eviction. (Belvair Cliffs Apartments, Ltd. V. Bembry, 56 Ohio Misc. 37), and the court did not abuse its discretion, therefore, in taking into consideration the circumstances attending the alleged breach of the rental agreement.
>
> In fact, even in those cases which do not involve federally subsidized housing, it has long been recognized that courts may decline to terminate a lease for non-payment, where the breach was not willful or deliberate. Bates-Springer, Inc. v. Nay, 91 Ohio Law Abs. 425; Southern Hotel v. Miscott, 44 Ohio App. 2d 217; Zanetos v. Sparks, 13 Ohio App. 3d 242.

G. Mootness

If the tenant comes to the court and testifies that he has vacated the premises, then the court will dismiss the eviction action. This is because the cause of action is moot.

Pingue v. Soos, 1991 Ohio App. LEXIS 5863 (December 5, 1991) Franklin Co. App. No. 91-AP-138, unreported. While this is technically a defense to an eviction action, it is a defense that a landlord does not mind hearing because it means that the tenant is no longer in possession of the rented premises. The reason that the tenant will come in to assert this defense is because they will get an entry showing that the eviction action was dismissed, and if it ever appears on the tenant's credit record, the tenant can argue with the credit bureau for its removal since the eviction technically was not granted. Many courts require the tenant to have actually turned over all the keys to the premises before considering the tenant to have vacated the premises. A landlord should insist upon all keys being returned as well as having the tenant testify that he or she gives up any ownership in any property left behind at the premises.

VI. The Hearing

A. Scope of the Hearing

It is important to remember that evictions are summary proceedings, meaning that they are not normal court hearings. Ohio law recognizes the need of landlords and tenants to have fast decisions regarding the issue of who has the right to possession of the rented residential premises. This means that the formal rules of Civil Procedure and Evidence do not apply, and the official conducting the hearing may consider what evidence he sees fit and may run the proceedings in any manner that is fair.

It also means that the only dispute that will be addressed at the eviction hearing is who has the right to possession of the premises. The court will not take evidence on, nor make a decision about, who owes what money to whom. The court will make a decision regarding possession, and call the next case.

The Court will be interested in the answers to four questions, and this is referred to as the *prima facie* case for an eviction. Those four questions are: Did the landlord post the three day notice on the door of the apartment? At the time of the posting of the three-day notice, was the tenant in breach of the lease agreement? Is the tenant still in breach of the lease agreement? Is the tenant still in possession of the apartment? If the answer to all four questions is yes, then absent some valid defense, the tenant will be evicted.

B. Preparation for the Hearing

In preparing for the hearing, I like to be ready for anything that can happen. I do this so I can avoid a second or third trip to court for additional hearings. Time is money and no one wants to spend several hours on a matter that should take less than one hour.

1. Check the status of the case online

Almost all Ohio courts have websites with public access sections where anyone can go to review the case docket and determine what is happening with their case. You

generally search by the landlord's name or the tenant's name. If you know the case number then you can search by case number. Sometime close to the hearing date, review the case docket online and see what has been filed. The tenant may have filed for a continuance of the hearing, and the court may have already granted the continuance. You may also find out that the bailiff was not able to serve the summons and complaint upon the tenant because you listed the wrong address. If no service was obtained, there can be no hearing. You will need to visit the clerk of courts and file an amended complaint with the correct address. You can also determine whether the tenant has obtained legal counsel. Going online and checking the current status of the case takes a few minutes but can save you hours.

2. Talk to the tenant prior to going to court

The relationship between the parties may have deteriorated to the point where this is no longer possible, but, if either party has an attorney, the attorney should contact the opposing party and, at the very least, attempt to determine the intentions of the opposing party. A landlord's attorney should try to determine if the tenant plans to move out or is in the process of moving out. If so then perhaps the parties can negotiate a move-out date.

Filing a lawsuit often results in the tenant becoming very hostile and adversarial. I have been involved with many cases where the tenant fought tooth and nail at the hearing only to finally admit near the very end that all they wanted to do was vacate the premises and were in the process of doing so. Typically, tenants just want additional time to move-out. If you can determine that this is the case early on, you can save yourself an extremely large headache.

3. Prepare all necessary forms that you will need in advance

In the appendix, I have included all the forms that I bring to evictions in Franklin County. Each form can be completed on your computer with Adobe Acrobat Reader as they are all pdf-fillable. This format allows me to complete the forms very quickly and lends a professional appearance over those completed in handwriting. I have included "Instructions to the Clerk" form for paying for the Writ of Restitution and set out; the set out form; a notice of appearance of counsel form; a dismissal form; my sample landlord's affidavit; my sample agreed entry form; my sample breach of agreed entry affidavit; and my continuance request form. You may want to visit your county courthouse in advance or check on their website for similar forms so that you are prepared for the paperwork side of your eviction action.

4. Talk with the tenant at court

The best result is one reached by both parties. If the tenant was unwilling to talk with you prior to the hearing, he may become more reasonable at the actual hearing. There is nothing like a deadline to motivate someone and most agreements are made at the courthouse, right before trial. I try to determine what the tenant's plans are in terms

of moving out or remaining at the rental unit. If the tenant wishes to remain then I try to work out a payment plan with the agreed entry form that I have included in the appendix.

If an agreement is reached, the landlord can often get the best of both worlds. The agreed entry reads that the eviction is granted to the landlord, but the landlord will not enforce the eviction if the tenant makes the payments according to the installment plan listed on the agreement. If the tenant misses a payment or is late on a payment then the landlord can proceed with removing the tenant from the premises by obtaining a writ of restitution and set out. As I mention elsewhere in this publication, I generally try to have the first payment occur within a few days of the agreement. An early first payment date lets the landlord know almost immediately whether the tenant intends on honoring the agreement or not.

VII. Decision

Once the court has heard all of the evidence, then the Court will issue its decision and do so generally from the bench. If the court rules in favor of the tenant, then the action will be dismissed. But if the court rules in favor of the landlord, a decision will be issued in the landlord's favor from the bench, and that decision will be taken down to the clerk of court's office where the landlord can apply for something called a Writ of Restitution.

VIII. Writ of Restitution

This is also known in some jurisdictions as a "red tag" as it looks like a red parking ticket.[1] Other courts may just post a plain white piece of paper for the writ. If the tenant gets one of these on the door, then his days in possession of the property are getting really short. Once the landlord applies for (and pays for) the Writ of Restitution, the court's employees (generally the bailiff but some counties do employ the county sheriff for such work) will take it to the rented premises and post it on the door (some courts have the landlord take the red tag and post it on the tenant's door - check with the bailiff or the clerk of courts for procedures in your county). From the date on the Writ, the tenant generally has five days to vacate. If, after that five day period has elapsed, the tenant is still in possession of the premises, then the landlord may call down to the clerk of court's office and schedule a set-out.

IX. Set Out

A set-out occurs when the landlord, a bailiff or sheriff's deputy, a lock smith, and a bunch of the landlord's employees or friends (carrying trash bags, boxes and tarps if necessary) arrive at the rented premises and retake possession. The locksmith goes to work changing the locks. The tenant's possessions are removed and set out on the curb,

[1] An example of a red tag is here - http://www.ohiolandlordtenant.com/vbb/showthread.php?413-Here-is-an-example-of-a-red-tag-or-writ-of-restitution

and if the tenant interferes in anyway, he will be escorted off the premises by the bailiff or deputy. Thus ends the eviction process.

Some counties do not require that the landlord remove the tenant's belongings at the set out and consider any belongings left at the premises on the day of the set out are deemed forfeited to the landlord by the tenant. If your rental properties are in such a county, you are in a strong bargaining position if the tenant has forfeited property in this manner. If the tenant deems the property left behind as valuable, you may be able to negotiate some sort of payment for past due rent in exchange for return of the belongings.

Other courts require that your set-out crew be a moving company that has registered itself with the court in advance. Others may require the landlord to place the tenant's belongings in storage for a period of time. As you can see, set-outs can become very expensive especially if you have to hire a moving company or pay for storage. Set-outs provide a strong incentive for landlords to negotiate a voluntary departure with the tenant.

When scheduling a set-out in Franklin County, it is important to call the bailiff between 8 a.m. and 9:30 a.m. on the morning after the red tag has expired. The bailiffs generally leave for the day to conduct set-outs after 10 a.m. It is difficult to contact them so do not assume that scheduling a set-out will be simple. You must indicate that you have recently checked the premises, the tenant is still in the premises and that you require a set out. The bailiff may set up a day that the set out will occur and may require you to call back the morning of that day to obtain a specific time for the set-out. Be ready to go because if you call in at 9:30 a.m., you could be scheduled for 10:30 a.m. The bailiff will require you to have at least four individuals to move the tenant out, garbage bags in which to place the tenant's belongings and plastic tarps if rain or other precipitation is likely. The bailiff will also require that you have their belongings out in an hour. Bring new locks to install on the doors. Similar procedures may be followed in other counties.

Check with the clerk of court or directly with the bailiff to determine the exact procedure in your county.

X. Negotiation

When the two warring parties get to court, the landlord may take a dim view of the tenant's promise to pay the rent by next week if the landlord will dismiss his eviction action. The problem is that if the tenant doesn't come through, then the landlord has to start the whole process over again if the action is dismissed. However, there is a middle ground if the landlord thinks that the tenant may be serious about paying at a later date.

It is possible to write up an Agreed Entry for the court to sign, wherein the tenant agrees to pay the past due rent (or otherwise correct whatever it is that caused the lease to be breached) by a certain date. In the court's Entry, it will state that if the rent is not paid (or the breached condition remedied) by the date in the agreement, that the landlord shall have the right to immediate possession. This way, the tenant gets a second chance to

make things right, and the landlord gets possession without delay (depending on the court and how the agreement is worded) if the tenant falls through on his promises.

In such negotiations, tenants will often want to catch up on past due rent by making several payments over a period of time. Most courts require that the agreement be fulfilled within 30 days of its approval by the judge. After 30 days, the landlord will often be required to file a new eviction action. When drafting the agreement, the landlord wants to include language that "Judgment and restitution of the premises are hereby granted to the plaintiff (landlord)." That language indicates that the landlord has been granted the eviction. In the same breath, the agreement will read that "the landlord will forego enforcing this judgment if the tenant makes the following payments on or before the dates specified below." In essence, if the tenant honors the agreement, he will not be evicted.

As mentioned above, the terms of the agreement should require that it be fulfilled within 30 days (or slightly less than 30 days so that the landlord can proceed with a writ of restitution and set out if the tenant fails to honor the agreement's terms). I generally require that the tenant make some payment (even a small payment) within a few days after signing the agreement. If the tenant misses this payment then the landlord can enforce the agreement against the tenant right away.

Many times tenants will want to make their first payment under the agreement two or three weeks after signing. In effect, they have extended their stay at the rental premises another three or four weeks without paying rent if they miss the first payment. The idea is to find out right away whether they are serious about honoring the terms of the agreement by requiring a first installment a day or two after signing the agreement. I have included a sample agreement in the appendix of these materials.

If the tenant fails to make a payment in a timely fashion, the landlord will generally head to the clerk of courts office and apply for the writ of restitution. The landlord may also apply for the set out at the same time. Some courts require an affidavit by the landlord indicating that the tenant has failed to comply with the terms of the agreed entry before a writ of restitution will issue. The landlord will take the affidavit to the duty judge and obtain an entry authorizing the writ. Some landlords may try to shortcut this process by writing into the agreed entry that if the tenant fails to make a payment on time then the landlord can obtain an immediate set out without obtaining a writ of restitution. Some courts may allow this but may also require that the landlord obtain an entry from the duty judge authorizing the immediate set out.

Keep in mind that the no one is under a duty to negotiate, and if either party is insistent upon its day in court, then the hearing will proceed. Nevertheless, it is generally a good idea to attempt to negotiate with the tenant as often the best result is reached by the parties and not the court.

XI. Need for Legal Counsel

This kit is no substitute for legal counsel at an eviction hearing. At the time of the writing of this material, legal representation in an eviction generally costs about $300.00 in year 2012 dollars. Anyone can represent himself or herself in court (though this is not the best of ideas), but if you want to represent someone else, you have to be an attorney. This means that your friend who swallowed a law book will not be able to come in and speak on your behalf at the court hearing.

It also means that if the landlord is a corporation, then that corporation cannot bring its employees in to represent it. While such employees may certainly testify as witnesses, they cannot file papers, make arguments, cross examine witnesses, and so on, as this constitutes the unauthorized practice of law. Cleveland Bar Assn. v. Picklo (2002), 96 Ohio St.3d 195.

Notice to Leave premises

To: __(Tenant)_____ and all other occupants

You are hereby notified that _____(Landlord)_____ wants you on or before (dated in accordance with 3 day rule) to leave the premises you now occupy and which you have improperly possessed of *(Landlord)*_____ situated and described as follows:

Address:_____(of premises)_____

Grounds: __(grounds for eviction)_____

Although you have been asked to leave the premises, you are still responsible for any unpaid rents and all rents agreed to as specified in your lease. You are also responsible for any damage beyond ordinary wear and tear that you have done to the premises.

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 posted on door)_____
Date

Notice to Leave premises

To: _____ and all other occupants

You are hereby notified that _____ wants you

on or before _____, 2012 to leave the premises you now occupy and

which you have improperly possessed of _____ situated and

described as follows:

Address: _____

Grounds: _____

Although you have been asked to leave the premises, you are still responsible for any unpaid rents and all rents agreed to as specified in your lease. You are also responsible for any damage beyond ordinary wear and tear that you have done to the premises.

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

XII. THE EVICTION COMPLAINT

A. The Caption

The first thing that appears on the top of anything filed in a case is the Caption. The Caption tells the court what the item is, who the parties are, who the judge is, and what the case number is. Naturally, you will not know the case number until you actually file it with the clerk's office. At that point they will either stamp it on or you can write it in.

In the case of a Complaint, the Caption needs to be a little more detailed than other pleadings, motions or entries so as to include the names and addresses of every party. This is because the Complaint is usually the first thing that gets filed in a lawsuit, and the clerk of courts needs to serve a copy of it on the defendants (service of process is akin to delivering a copy to the defendant(s) in such a way that they cannot claim that they did not have fair warning that there was a lawsuit filed against them).

B. Parties

1. Plaintiff

It is important to identify the Plaintiff(s). It's pretty simple to find out who the Plaintiff(s) is. A Plaintiff would be any person or entity seeking the eviction.

2. Defendants

The Defendants are any person who is in possession of the apartment. The landlord filing the eviction should list all of the signatories on the lease, any occupants listed on the lease by name, and further, should include "all other occupants" just to make sure that the FED action will be enforceable against any other occupants that the landlord does not know about. You will need to list them by name and address.

C. Claims for Relief and Factual Background

The first thing I do is set up a heading in bold for each cause of action. In this case, the most important claim is for possession of the premises, so I have placed that first. Usually when there is an eviction, the landlord also has certain damages that he has incurred by way of the breach of the lease agreement leading to the eviction. The second claim for relief is for monetary damages. In that claim, I identify the breach of the agreement or the way that the landlord has been damaged.

There are no magical words that must be in a Complaint, only words that lawyers commonly use to make a complaint look professionally done. All that the Civil Rules require you to put in your Complaint is a "short plain statement of the facts" of the case. It is, however, convenient, if you break down each section into individual allegations so

that you know what the other side is admitting or denying. This is why I have given each sentence its own numbered paragraph.

Keep in mind that the court knows nothing of your situation unless you tell the court about it in the Complaint. Thus I start out by identifying this as a dispute between a landlord and a tenant over certain residential property. I next list the address of the Apartment, and include the address so that the court can see that it has jurisdiction over the case.

Civil Rule 10(D) requires that anyone who is suing on a written contract must attach a copy of that contract to the Complaint, or point out somewhere in the Complaint that he or she does not have a copy of the written contract. If your lease with the tenant(s) was verbal, then you can skip this section.

I next tell the court the reason for the eviction. In the example of the FED action included in this kit, the tenant's lease has simply run out and he has refused to leave. But a landlord could just as easily have included the allegation that the tenant has an unauthorized pet at the premises, or that he is late on the rent. Your reasons in the complaint must match the reasons given on the three day notice to vacate. Don't add new reasons to the complaint that are not part of the three day notice to vacate.

D. Wherefore Clause

In this section, you are telling the court what you want. In it, I specifically mention restitution of the premises and the money damages I am seeking. Don't put in anything silly like wanting a million dollars in punitive damages.

Keep in mind that if the person filing the complaint is the owner of the property, or runs his rental management business as a sole proprietorship, then the person filing may sign the complaint and file it Pro Se (meaning without an attorney).

1. Side Note on Rental Managers

I have never seen any case law addressing this issue, but I thought I might bring it up as a cautionary. An issue could possibly arise in the context of one person managing a property for another. The argument would go that while a person can manage another's property, he cannot practice law by filing an FED complaint on behalf of the owner unless he is an attorney. This would seem on the surface to be the unauthorized practice of law. The counter-argument would be that Ohio Revised Code Section 5321.01 defines a landlord as any person who manages rental property. So if the law defines the rental manager as a landlord, and since landlords can evict persons from property, then the rental manager should be able to file an FED on behalf of the landlord.

But the problem with this is that the Ohio Constitution gives the power to authorize a person to practice law to the Ohio Supreme Court, not to the Legislature. Thus an argument that the Ohio Legislature has allowed me to stand in for the landlord

by defining me as a landlord may not carry the day. So if you are a sole proprietor managing property for other owners, you may run into this issue someday unless you are using an attorney to file your FED actions.

This matter of unauthorized practice of law is a lot clearer when the landlord is a corporation, LLC, LP or a representative of any other legal entity. In such cases, an employee of the corporation may not file the complaint himself unless he is an attorney duly licensed to practice law in the state of Ohio.

E. Signature

By signing the pleading (and someone must sign it for filing), the signatory agrees under Civil Rule 7 that everything in the Complaint is true to the best of his knowledge, and that it has a basis in law, rather than just some frivolity meant to run up legal bills for the defendant.

IN THE MUNICIPAL COURT OF FRANKLIN COUNTY, OHIO

Rental Property Management Co. **123 Main Street** **Columbus, Ohio 43221**	**:**	**Case No.** (provided by clerk)
Plaintiff,	**:**	**Magistrate:** (provided by clerk)
v.	**:**	**Forcible Entry and Detainer**
Thomas Tenant and all other occupants **456 Town Street Apt. #102** **Columbus, Ohio 43221**	**:**	**Action and Complaint for Damages**
Defendants.		

FORCIBLE ENTRY AND DETAINER ACTION AND COMPLAINT FOR DAMAGES

First Claim for Relief: Possession of the Premises

1. Defendants Thomas Tenant and all other occupants, on or before September 7, 2011, as tenants of the plaintiff, Rental Property Management Co., under an express written lease agreement (a true and accurate copy of which has been attached hereto as exhibit A) entered upon the following described premises, situated in the City of Columbus and in Franklin County of the state of Ohio and known as 456 Town Street, Apartment # 102, Columbus, Ohio 43221.
2. The term of this tenancy expired on September 30, 2012.
3. Defendants have violated the terms of the written lease agreement by failing to pay rent in a timely fashion for the month of September, 2012 and have held over the term of the tenancy without permission or authorization of the Plaintiff.
4. Defendants are presently in violation of the terms of the lease.

5. Plaintiff caused a three-day notice to vacate (a true and accurate copy of which has been attached hereto as exhibit b) to be placed upon the door of Defendants' residence on September 17, 2012.
6. Defendants are in breach and are still presently holding possession of the premises against the wishes of the Plaintiff.

Second Claim for Relief: Monetary Damages

7. Defendants have failed to pay rent for the month of September, 2012, in the amount of $515.00.
8. Defendants' failure to pay rent to Plaintiff is a breach of the terms of the lease agreement signed between Defendants and Plaintiff.
9. Defendants' breach of the lease agreement has caused damages to the Plaintiff in the amount of $515.00.

Wherefore, Plaintiff demands a writ of restitution for the premises so that possession may be returned to Plaintiff, along with damages in the amount of $515.00 which will fully and fairly compensate it for its damage together with attorney fees, costs, and any other relief, both legal or equitable to which it may be entitled.

Respectfully submitted,

Eric E. Willison (#0066795)
Andrew J. Ruzicho (#0064024)
625 City Park Avenue
Columbus, Ohio 43206-1003
(614) 580-4316
Attorney for Plaintiff

IN THE MUNICIPAL COURT OF _____COUNTY

_____ :

Plaintiff, : **Case No.**

:

_____ :

Defendant(s). :

COMPLAINT
FORCIBLE ENTRY AND DETAINER

First Cause of Action

1. Defendant(s) and all other occupants entered upon the following described premises, situated at Columbus, Ohio and known as _____

2. By the terms of such tenancy, the defendant(s), as lessee(s), undertook and agreed to pay the sum of _____dollars and _____cents ($_____.__) per month, payable in advance, on or before the first day of each month for the occupation of the premises.

3. Defendant(s) has breached the lease of the parties, has failed to pay the rent due, has failed to honor their obligations pursuant to O.R.C. §5321.05 and has breached the rules and regulations of the plaintiff.

4. Plaintiff further says that on the ____ day of _____, 2012, defendant(s) was duly served with a written legal notice in compliance with O.R.C. §1923.04 to vacate and leave said premises on or before the _____ day of _____ _____, 2012. A copy of this notice is attached hereto.

5. Plaintiff, owner or authorized agent of owner, says that since the _____ day of _____ , 2012, defendant(s) set forth in the caption of the complaint has unlawfully and forcibly detained from the plaintiff possession of the following described premises: _____.

Second Cause of Action

6. Paragraphs 1 through 5 are incorporated as if fully rewritten herein.

7. Plaintiff further alleges that defendant(s) owes plaintiff the sum of _____ _____dollars and _____ cents ($_____.___) for unpaid rent, late charges and/or utilities, plus will owe if not paid rent for the balance of the lease term. Furthermore, if plaintiff has regained possession, defendant(s) may be indebted to plaintiff for damages in excess of normal wear and tear at the above described premises as required by the lease and/or O.R.C. § 5321.05, which may include charges for cleaning, repair, trash removal, utilities, late charges and other unpaid rent and costs incurred as a result of defendant's breach the extent of which cannot be ascertained until plaintiff has regained possession, which amounts are the reasonable value of the use of said premises.

WHEREFORE, plaintiff demands process and restitution of the subject premises and, if plaintiff has regained possession, judgment against defendant(s), jointly and severally, in the sum of $_____.___ plus future rents and an amount for other damages due to the premises as attested to via affidavit or at trial, plus court costs and interest at the statutory rate of 4% per annum, the total damages not to exceed $15,000.00.

Respectfully submitted,

_____

EVICTION CHECKLIST

1. Did you serve the proper three-day notice upon the tenant?

   - Three day notice must contain statutory language in bold
   - Did you include all grounds for the eviction within the three day notice?
   - Does the tenant violation require a 30 day notice to vacate?
   - Did you properly serve the three day notice upon the tenant? Generally, you need to serve the notice in a way that you can prove the tenant received it?

2. Have you waited the proper amount of time before filing your complaint?

   - date of service of three day notice does not count in time calculation neither do weekends nor holidays

3. Have you accepted any future rents from the tenant?

   - doing so would be a defense to your eviction

4. Have you completed all the blanks on the complaint?

5. Did you sign the complaint?

6. Did you attach a copy of the three day notice, the lease and a ledger showing unpaid amounts to the complaint?

7. Do you have the correct number of copies of the complaint to file?

   - most courts require the original **plus** two copies per defendant plus one copy for yourself

8. Do you have the filing fee and the proper form of payment?

   - most courts will not accept personal checks

CONCLUSION

I hope you found the information contained within this guide book helpful in performing your own eviction. Any purchaser of this book who later purchases our complete landlord's kit (which includes "The Landlord's Guide to Ohio Evictions"; "The Landlord's Guide to Ohio Landlord Tenant Law"; our model lease; and our "Audio Guide to Ohio Evictions") will be refunded the price of this guide book.

You can find our complete landlord's kit at the following address at the bottom of the page:

http://www.ohiolandlordtenant.com/evictkit.html

30 Day Notice to Remedy Conditions

To: _______(*Tenant*)and all other occupants

You are hereby notified that _____(*Landlord*) wants you

on or before _____ (*dated 30 days from date of service upon tenant)* to

remedy the following conditions existing at the premises: (*check all that apply:*

_____Failure to keep the premises safe and sanitary;

_____Failure to dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner;

_____Failure to keep all plumbing fixtures in the dwelling unit as clean as their condition permits;

_____Failure to use and operate all electrical and plumbing fixtures properly;

_____Failure to comply with the requirements imposed on tenants by all applicable state and local housing, health, and safety codes;

_____Failure to personally refrain and forbid any other person who is on the premises with his permission from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance, or other part of the premises;

_____Failure to maintain in good working order and condition any range, refrigerator, washer, dryer, dishwasher, or other appliances supplied by the landlord and required to be maintained by the tenant under the terms and conditions of a written rental agreement;

_____Failure to conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;

_____Failure to conduct himself, and require persons in his household and persons on the premises with his consent to conduct themselves, in connection with the premises so as not to violate the prohibitions contained in Chapters 2925. and 3719. of the Revised Code, or in municipal ordinances that are substantially similar to any section in either of those chapters, which relate to controlled substances.

_____Failure to reasonably give consent for the landlord to enter into the dwelling unit in order to inspect the premises, make ordinary, necessary, or agreed repairs, decorations, alterations, or improvements, deliver parcels that are too large for the tenant's mail facilities, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

Details of the problem and what needs to be done:_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____
Landlord

_____(*date served*)_____
Date

APPENDIX I
OHIO'S FORCIBLE ENTRY AND DETAINER STATUTE

1923.01 Jurisdiction and Definitions

1923.02 Persons subject to forcible entry and detainer actions

1923.03 Judgment not a bar

1923.04 Notice;service

1923.05 Complaint filed and recorded

1923.051 Procedure when restitution for drug offenses

1923.06 Summons; service of process

1923.061 Defenses and counterclaims

1923.062 Deployment on active duty

1923.07 Proceedings if defendant fails to appear

1923.08 Continuance and bond

1923.081 Joinder of causes of action

1923.09 Action tried by judge

1923.10 Trial by jury

1923.101 Fee of jury

1923.11 Entry and judgment

1923.12. Eviction from manufactured home park.

1923.13 Writ of execution

1923.14 Writ of execution enforced

1923.15 Inspection of premises; correcting conditions

1923.01. Jurisdiction in forcible entry and detainer; definitions.

(A) As provided in this chapter, any judge of a county or municipal court or a court of common pleas, within the judge's proper area of jurisdiction, may inquire about persons who make unlawful and forcible entry into lands or tenements and detain them, and about persons who make a lawful and peaceable entry into lands or tenements and hold them unlawfully and by force. If, upon the inquiry, it is found that an unlawful and forcible entry has been made and the lands or tenements are detained, or that, after a lawful entry, lands or tenements are held unlawfully and by force, a judge shall cause the plaintiff in an action under this chapter to have restitution of the lands or tenements.

(B) An action shall be brought under this chapter within two years after the cause of action accrues.

(C) As used in this chapter:

(1) "Tenant" means a person who is entitled under a rental agreement to the use or occupancy of premises, other than premises located in a manufactured home park, to the exclusion of others.

(2) "Landlord" means the owner, lessor, or sublessor of premises, or the agent or person the landlord authorizes to manage premises or to receive rent from a tenant under a rental agreement, except, if required by the facts of the action to which the term is applied, "landlord" means a park operator.

(3) "Park operator," "manufactured home," "mobile home," "manufactured home park," and "resident" have the same meanings as in section 3733.01 of the Revised Code.

(4) "Residential premises" has the same meaning as in section 5321.01 of the Revised Code, except, if required by the facts of the action to which the term is applied, "residential premises" has the same meaning as in section 3733.01 of the Revised Code.

(5) "Rental agreement" means any agreement or lease, written or oral, that establishes or modifies the terms, conditions, rules, or other provisions concerning the use or occupancy of premises by one of the parties to the agreement or lease, except that "rental agreement," as used in division (A)(13) of section 1923.02 of the Revised Code and where the context requires as used in this chapter, means a rental agreement as defined in division (D) of section 5322.01 of the Revised Code.

(6) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(7) "School premises" has the same meaning as in section 2925.01 of the Revised Code.

(8) "Sexually oriented offense" and "child-victim oriented offense" have the same meanings as in section 2950.01 of the Revised Code.

(9) "Recreational vehicle" has the same meaning as in section 4501.01 of the Revised

Code.

1923.02. Persons subject to forcible entry and detainer action.

(A) Proceedings under this chapter may be had as follows:

(1) Against tenants or manufactured home park residents holding over their terms;

(2) Against tenants or manufactured home park residents in possession under an oral tenancy, who are in default in the payment of rent as provided in division (B) of this section;

(3) In sales of real estate, on executions, orders, or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which the sale was made;

(4) In sales by executors, administrators, or guardians, and on partition, when any of the parties to the complaint were in possession at the commencement of the action, after the sales, so made on execution or otherwise, have been examined by the proper court and adjudged legal;

(5) When the defendant is an occupier of lands or tenements, without color of title, and the complainant has the right of possession to them;

(6) In any other case of the unlawful and forcible detention of lands or tenements. For purposes of this division, in addition to any other type of unlawful and forcible detention of lands or tenements, such a detention may be determined to exist when both of the following apply:

(a) A tenant fails to vacate residential premises within three days after both of the following occur:

(i) The tenant's landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation of Chapter 2925. or 3719. of the Revised Code, or of a municipal ordinance that is substantially similar to any section in either of those chapters, which involves a controlled substance and which occurred in, is occurring in, or otherwise was or is connected with the premises, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in this division. For purposes of this division, a landlord has "actual knowledge of or has reasonable cause to believe" that a tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in this division if a search warrant was issued pursuant to Criminal Rule 41 or Chapter 2933. of the Revised Code; the affidavit presented to obtain the warrant named or described the tenant or person as the individual to be searched and particularly described the tenant's premises as the place to be searched, named or described one or more controlled substances to be searched for and seized, stated substantially the offense

under Chapter 2925. or 3719 of the Revised Code or the substantially similar municipal ordinance that occurred in, is occurring in, or otherwise was or is connected with the tenant's premises, and states the factual basis for the affiant's belief that the controlled substances are located on the tenant's premises; the warrant was properly executed by a law enforcement officer and any controlled substance described in the affidavit was found by that officer during the search and seizure; and, subsequent to the search and seizure, the landlord was informed by that or another law enforcement officer of the fact that the tenant or person has or presently is engaged in a violation as described in this division and it occurred in, is occurring in, or otherwise was or is connected with the tenant's premises.

(ii) The landlord gives the tenant the notice required by division (C) of section 5321.17 of the Revised Code.

(b) The court determines, by a preponderance of the evidence, that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(i) of this section.

(7) In cases arising out of Chapter 5313. of the Revised Code. In those cases, the court has the authority to declare a forfeiture of the vendee's rights under a land installment contract and to grant any other claims arising out of the contract.

(8) Against tenants who have breached an obligation that is imposed by section 5321.05 of the Revised Code, other than the obligation specified in division (A)(9) of that section, and that materially affects health and safety. Prior to the commencement of an action under this division, notice shall be given to the tenant and compliance secured with section 5321.11 of the Revised Code.

(9) Against tenants who have breached an obligation imposed upon them by a written rental agreement;

(10) Against manufactured home park residents who have defaulted in the payment of rent or breached the terms of a rental agreement with a manufactured home park operator. Nothing in this division precludes the commencement of an action under division (A)(12) of this section when the additional circumstances described in that division apply.

(11) Against manufactured home park residents who have committed two material violations of the rules of the manufactured home park, of the public health council, or of applicable state and local health and safety codes and who have been notified of the violations in compliance with section 3733.13 of the Revised Code;

(12) Against a manufactured home park resident, or the estate of a manufactured home park resident, who has been absent from the manufactured home park for a period of thirty consecutive days prior to the commencement of an action under this division and whose manufactured home or mobile home, or recreational vehicle that is parked in the manufactured home park, has been left unoccupied for that thirty-day period, without

notice to the park operator and without payment of rent due under the rental agreement with the park operator;

(13) Against occupants of self-service storage facilities, as defined in division (A) of section 5322.01 of the Revised Code, who have breached the terms of a rental agreement or violated section 5322.04 of the Revised Code;

(14) Against any resident or occupant who, pursuant to a rental agreement, resides in or occupies residential premises located within one thousand feet of any school premises and to whom both of the following apply:

(a) The resident's or occupant's name appears on the state registry of sex offenders and child-victim offenders maintained under section 2950.13 of the Revised Code.

(b) The state registry of sex offenders and child-victim offenders indicates that the resident or occupant was convicted of or pleaded guilty to either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for that offense.

(15) Against any tenant who permits any person to occupy residential premises located within one thousand feet of any school premises if both of the following apply to the person:

(a) The person's name appears on the state registry of sex offenders and child-victim offenders maintained under section 2950.13 of the Revised Code.

(b) The state registry of sex offenders and child-victim offenders indicates that the person was convicted of or pleaded guilty to either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for that offense.

(B) If a tenant or manufactured home park resident holding under an oral tenancy is in default in the payment of rent, the tenant or resident forfeits the right of occupancy, and the landlord may, at the landlord's option, terminate the tenancy by notifying the tenant or resident, as provided in section 1923.04 of the Revised Code, to leave the premises, for the restitution of which an action may then be brought under this chapter.

(C) (1) If a tenant or any other person with the tenant's permission resides in or occupies residential premises that are located within one thousand feet of any school premises and is a resident or occupant of the type described in division (A)(14) of this section or a person of the type described in division (A)(15) of this section, the landlord for those residential premises, upon discovery that the tenant or other person is a resident, occupant, or person of that nature, may terminate the rental agreement or tenancy for those residential premises by notifying the tenant and all other occupants, as provided in section 1923.04 of the Revised Code, to leave the premises.

(2) If a landlord is authorized to terminate a rental agreement or tenancy pursuant to division (C)(1) of this section but does not so terminate the rental agreement or tenancy, the landlord is not liable in a tort or other civil action in damages for any injury, death, or loss to person or property that allegedly result from that decision.

(D) This chapter does not apply to a student tenant as defined by division (H) of section 5321.01 of the Revised Code when the college or university proceeds to terminate a rental agreement pursuant to section 5321.031 [5321.03.1] of the Revised Code.

1923.03. Judgment not a bar.

Judgments under this chapter are not a bar to a later action brought by either party.

1923.04. Notice; service.

(A) Except as provided in division (B) of this section, a party desiring to commence an action under this chapter shall notify the adverse party to leave the premises, for the possession of which the action is about to be brought, three or more days before beginning the action, by certified mail, return receipt requested, or by handing a written copy of the notice to the defendant in person, or by leaving it at his usual place of abode or at the premises from which the defendant is sought to be evicted.

Every notice given under this section by a landlord to recover residential premises shall contain the following language printed or written in a conspicuous manner: "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."

(B) The service of notice pursuant to section 5313.06 of the Revised Code constitutes compliance with the notice requirement of division (A) of this section. The service of the notice required by division (C) of section 5321.17 of the Revised Code constitutes compliance with the notice requirement of division (A) of this section.

1923.05. Complaint filed and recorded.

The summons shall not issue in an action under this chapter until the plaintiff files his complaint in writing with the court. The complaint shall particularly describe the premises so entered upon and detained, and set forth either an unlawful and forcible entry and detention, or an unlawful and forcible detention after a peaceable or lawful entry of the described premises. The complaint shall be copied into, and made a part of the record.

1923.051. Procedure when restitution sought on basis of drug offenses.

(A) Notwithstanding the time-for-service of a summons provision of division (A) of section 1923.06 of the Revised Code, if the complaint described in section 1923.05 of the Revised Code that is filed by a landlord in an action under this chapter states that the landlord seeks a judgment of restitution based on the grounds specified in divisions (A)(6)(a) and (b) of section 1923.02 of the Revised Code, then the clerk of the municipal court, county court, or court of common pleas in which the complaint is filed shall cause both of the following to occur:

(1) The service and return of the summons in the action in accordance with the Rules of Civil Procedure, which service shall be made, if possible, within three working days after the filing of the complaint;

(2) The action to be set for trial not later than the thirtieth calendar day after the date that the tenant is served with a copy of the summons in accordance with division (A)(1) of this section.

(B) The tenant in an action under this chapter as described in division (A) of this section is not required to file an answer to the complaint of the landlord, and may present any defenses that the tenant may possess at the trial of the action in accordance with section 1923.061 of the Revised Code.

(C) No continuances of an action under this chapter as described in division (A) of this section shall be permitted under section 1923.08 of the Revised Code, and if the tenant in the action does not appear at the trial and the summons in the action was properly served in accordance with division (A)(1) of this section, then the court shall try the action in accordance with section 1923.07 of the Revised Code.

(D) All provisions of this chapter that are not inconsistent with this section shall apply to an action under this chapter as described in division (A) of this section.

1923.06. Summons; service of process.

(A) Any summons in an action, including a claim for possession, pursuant to this chapter shall be issued, be in the form specified, and be served and returned as provided in this section. Such service shall be at least seven days before the day set for trial.

(B) Every summons issued under this section to recover residential premises shall contain the following language printed in a conspicuous manner: "A complaint to evict you has been filed with this court. No person shall be evicted unless the person's right to possession has ended and no person shall be evicted in retaliation for the exercise of the person's lawful rights. If you are depositing rent with the clerk of this court you shall continue to deposit such rent until the time of the court hearing. The failure to continue to deposit such rent may result in your eviction. You may request a trial by jury. You have the right to seek legal assistance. If you cannot afford a lawyer, you may contact your local legal aid or legal service office. If none is available, you may contact your local bar association."

(C) The clerk of the court in which a complaint to evict is filed shall mail any summons by ordinary mail, along with a copy of the complaint, document, or other process to be served, to the defendant at the address set forth in the caption of the summons and to any address set forth in any written instructions furnished to the clerk. The mailing shall be evidenced by a certificate of mailing which the clerk shall complete and file.

In addition to this ordinary mail service, the clerk also shall cause service of that process to be completed under division (D) or (E) of this section or both, depending upon which of those two methods of service is requested by the plaintiff upon filing the complaint to evict.

(D) (1) If requested, the clerk shall deliver sufficient copies of the summons, complaint, document, or other process to be served to, and service shall be made by, one of the following persons:

(a) The sheriff of the county in which the premises are located when the process issues from a court of common pleas or county court;

(b) The bailiff of the court for service when process issues from a municipal court;

(c) Any person who is eighteen years of age or older, who is not a party, and who has been designated by order of the court to make service of process when process issues from any of the courts referred to in divisions (D)(1)(a) and (b) of this section.

(2) The person serving process shall effect service at the premises that are the subject of the forcible entry and detainer action by one of the following means:

(a) By locating the person to be served at the premises to tender a copy of the process and accompanying documents to that person;

(b) By leaving a copy of the summons, complaint, document, or other process with a

person of suitable age and discretion found at the premises if the person to be served cannot be found at the time the person making service attempts to serve the summons pursuant to division (D)(2)(a) of this section;

(c) By posting a copy in a conspicuous place on the subject premises if service cannot be made pursuant to divisions (D)(2)(a) and (b) of this section.

(3) Within five days after receiving the summons, complaint, document, or other process from the clerk for service, the person making service shall return the process to the clerk. The person shall indicate on the process which method described in division (D)(2) of this section was used to serve the summons. The clerk shall make the appropriate entry on the appearance docket.

(E) If requested, the clerk shall mail by certified mail, return receipt requested, a copy of the summons, complaint, document, or other process to be served to the address set forth in the caption of the summons and to any address set forth in any written instructions furnished to the clerk.

(F) Service of process shall be deemed complete on the date that any of the following has occurred:

(1) Service is made pursuant to division (D)(2)(a) or (b) of this section.

(2) Both ordinary mail service under division (C) and service by posting pursuant to division (D)(2)(c) of this section have been made.

(3) For service performed pursuant to division (E) of this section, on the date of mailing, if on the date of the hearing either of the following applies:

(a) The certified mail has not been returned for any reason other than refused or unclaimed.

(b) The certified mail has not been endorsed, and the ordinary mail has not been returned.

(G) (1) The claim for restitution of the premises shall be scheduled for hearing in accordance with local court rules, but in no event sooner than the seventh day from the date service is complete.

(2) Answer day for any other claims filed with the claim for possession shall be twenty-eight days from the date service is deemed complete under this section.

1923.061. Defenses and counterclaims.

(A) Any defense in an action under this chapter may be asserted at trial.

(B) In an action for possession of residential premises based upon nonpayment of the rent or in an action for rent when the tenant or manufactured home park resident is in possession, the tenant or resident may counterclaim for any amount he may recover under the rental agreement or under Chapter 3733. or 5321. of the Revised Code. In that event, the court from time to time may order the tenant or resident to pay into court all or part of the past due rent and rent becoming due during the pendency of the action. After trial and judgment, the party to whom a net judgment is owed shall be paid first from the money paid into court, and any balance shall be satisfied as any other judgment. If no rent remains due after application of this division, judgment shall be entered for the tenant or resident in the action for possession. If the tenant or resident has paid into court an amount greater than that necessary to satisfy a judgment obtained by the landlord, the balance shall be returned by the court to the tenant or resident.

1923.062. Authority of court where ability to pay agreed rent is materially affected by deployment on active duty.

(A) In an action under this chapter for possession of residential premises of a tenant or manufactured home park resident who is deployed on active duty or of any member of the tenant's or resident's immediate family, if the tenant or resident entered into the rental agreement on or after the effective date of this section, the court may, on its own motion, and shall, upon motion made by or on behalf of the tenant or resident, do either of the following if the tenant's or resident's ability to pay the agreed rent is materially affected by the deployment on active duty:

(1) Stay the proceedings for a period of ninety days, unless, in the opinion of the court, justice and equity require a longer or shorter period of time;

(2) Adjust the obligation under the rental agreement to preserve the interest of all parties to it.

(B) If a stay is granted under division (A) of this section, the court may grant the landlord or park operator such relief as equity may require.

(C) This section does not apply to landlords or park operators operating less than four residential premises.

(D) As used in this section, "active duty" means active duty pursuant to an executive order of the president of the United States, an act of the congress of the United States, or section 5919.29 or 5923.21 of the Revised Code.

1923.07 Proceedings if defendant fails to appear.

If the defendant does not appear in action under this chapter and the summons was properly served, the court shall try the cause as though the defendant were present.

1923.08 Continuance and bond.

No continuance in an action under this chapter shall be granted for a period longer than eight days, unless the plaintiff applies for the continuance and the defendant consents to it, or unless the defendant applies for the continuance and gives a bond to the plaintiff, with good and sufficient surety, that is approved by the court and conditioned for the payment of rent that may accrue, if judgment is rendered against the defendant.

1923.081. Joinder of causes of action.

A trial in an action for forcible entry and detainer for residential premises, or for a storage space at a self-service storage facility, as defined in division (A) of section 5322.01 of the Revised Code, pursuant to this chapter may also include a trial on claims of the plaintiff for past due rent and other damages under a rental agreement, unless for good cause shown the court continues the trial on those claims. For purposes of this section, good cause includes the request of the defendant to file an answer or counterclaim to the claims of the plaintiff or for discovery, in which case the proceedings shall be the same in all respects as in other civil cases. If, at the time of the trial, the defendant has filed an answer or counterclaim, the trial may proceed on the claims of the plaintiff and the defendant.

1923.09. Action tried by judge.

(A) If an action under this chapter is not continued, the place of trial is not changed, and neither party demands a jury on the return day of the summons, a judge of the court shall try the cause. After hearing the evidence, if the judge concludes that the complaint is not true, the judge shall enter judgment against the plaintiff for costs. If the judge finds the complaint to be true, the judge shall render a general judgment against the defendant, in favor of the plaintiff, for restitution of the premises and costs of suit. If the judge finds the complaint true in part, the judge shall render a judgment for restitution of that part only, and the costs shall be taxed as the judge considers just.

(B) If a judgment is entered under this section in favor of a plaintiff who is a park operator, the judge shall include in the judgment entry authority for the plaintiff to permit, in accordance with section 1923.12 and division (B) of section 1923.13 and division (B) of section 1923.14 of the Revised Code, the removal from the manufactured home park and potential sale, destruction, or transfer of ownership of the defendant's manufactured home, mobile home, or recreational vehicle.

1923.10. Trial by jury.

If a jury is demanded by either party in an action under this chapter, until the impaneling of the jury, the proceedings shall be in all respects as in other cases. The jury shall be sworn to try and determine whether the complaint, naming the plaintiff, about to be presented to them, is true according to the evidence. If the jury finds that the complaint is true, it shall render a general verdict against the defendant. If the jury finds that the complaint is not true, it shall render a general verdict in favor of the defendant. If the jury finds that the complaint is true in part, it shall render a verdict setting forth the facts that it finds are true.

1923.101. Fee of jury.

In actions under this chapter before a county court, a party demanding a jury shall first deposit money with the court sufficient to pay the jury fee.

1923.11. Entry and judgment.

(A) The court shall enter the verdict rendered by a jury under section 1923.10 of the Revised Code upon the docket, and render judgment in the action as if the facts, authorizing the finding of the verdict, had been found by the court itself.

(B) If a judgment is entered under this section in favor of a plaintiff who is a park operator, the judge shall include in the judgment entry authority for the plaintiff to permit, in accordance with section 1923.12 and division (B) of section 1923.13 and division (B) of section 1923.14 of the Revised Code, the removal from the manufactured home park and potential sale, destruction, or transfer of ownership of the defendant's manufactured home, mobile home, or recreational vehicle.

1923.12. Eviction of resident or estate from manufactured home park.

(A) If a resident or a resident's estate has been evicted from a manufactured home park pursuant to a judgment entered under section 1923.09 or 1923.11 of the Revised Code and if the resident or estate has abandoned or otherwise left unoccupied the resident's manufactured home, mobile home, or recreational vehicle on the residential premises of the manufactured home park for a period of three days following the entry of the judgment, the operator of the manufactured home park may provide to the titled owner of the home or vehicle a written notice to remove the home or vehicle from the manufactured home park within fourteen days from the date of the delivery of the notice. The park operator shall deliver or cause the delivery of the notice by personal delivery to the owner or by ordinary mail sent to the last known address of the owner. Except as provided in divisions (D) and (E) of this section, if the owner of the manufactured home, mobile home, or recreational vehicle does not remove it or cause it to be removed from the manufactured home park within fourteen days from the date of the delivery of the notice, the park operator may follow the procedures of division (B) of section 1923.13 and division (B) of section 1923.14 of the Revised Code to permit the removal from the manufactured home park, and the potential sale, destruction, or transfer of ownership of the home or vehicle.

(B) Every notice provided to the titled owner of a manufactured home, mobile home, or recreational vehicle under this section shall contain the following language printed in a conspicuous manner: "You are being asked to remove your manufactured home, mobile home, or recreational vehicle from the residential premises of ....., a manufactured home park, in accordance with a judgment of eviction entered in ..... court on ..... against ..... If the manufactured home, mobile home, or recreational vehicle is not removed from the manufactured home park within fourteen days from the date of delivery of this notice, the home or vehicle may be sold or destroyed, or its title may be transferred to ....., pursuant to division (B) of both sections 1923.13 and 1923.14 of the Revised Code. If you are in doubt regarding your legal rights, it is recommended that you seek legal assistance."

(C) Before requesting a writ of execution under division (B) of section 1923.13 of the Revised Code, the park operator shall conduct or cause to be conducted a search of the appropriate public records that relate to the manufactured home, mobile home, or recreational vehicle, and make or cause to be made reasonably diligent inquiries, for the purpose of identifying any persons who have an outstanding right, title, or interest in the home or vehicle. If the search or inquiries reveal any person who has an outstanding right, title, or interest in the manufactured home, mobile home, or recreational vehicle, the park operator shall list the name and last known address of each person with a right, title, or interest of that nature on its request for the writ of execution. The park operator also shall certify on the request that park operator provided the written notice required by this section.

(D) When a resident's estate has been evicted from a manufactured home park pursuant to a judgment entered under section 1923.09 or 1923.11 of the Revised Code, the removal from the park and potential sale, destruction, or transfer of ownership of the resident's

home or vehicle shall be conducted in the manner prescribed by the probate court in which letters testamentary or of administration have been granted for the estate in accordance with Title XXI [21] of the Revised Code. The park operator may store the resident's home or vehicle at a storage facility or at another location within the manufactured home park during the administration of the estate. The park operator shall notify the executor or administrator of the resident's estate where the home or vehicle will be stored during the administration of the estate. The costs for the removal and storage of the home or vehicle shall be a claim against the resident's estate without further presentation of the claim to the executor or administrator.

(E) (1) When the resident who has been evicted from a manufactured home park pursuant to a judgment entered under section 1923.09 or 1923.11 of the Revised Code is the titled owner of a manufactured home, mobile home, or recreational vehicle and is or becomes deceased prior to the removal of the home or vehicle from the manufactured home park, and no probate court has granted letters testamentary or of administration with respect to the resident's estate, the park operator may store the home or vehicle at a storage facility or at another location within the manufactured home park before and after a probate court grants letters testamentary or of administration with respect to the resident's estate pursuant to Title XXI [21] of the Revised Code.

(2) If no probate court grants letters testamentary or of administration with respect to the resident's estate within one year of the date of the eviction of the resident from the manufactured home park pursuant to a judgment entered under section 1923.09 or 1923.11 of the Revised Code, the park operator may follow the procedures of division (B) of section 1923.13 and division (B) of section 1923.14 of the Revised Code to permit the removal from the park and potential sale, destruction, or transfer of ownership of the home or vehicle.

(3) If a probate court grants letters testamentary or of administration with respect to the resident's estate within one year of the date of the eviction of the resident from the park, the removal from the park and potential sale, destruction, or transfer of ownership of the home or vehicle shall be conducted pursuant to division (D) of this section.

1923.13. Writ of execution.

(A) When a judgment of restitution is entered by a court in an action under this chapter, unless the plaintiff or the plaintiff's agent or attorney proceeds under division (B) of this section, at the request of the plaintiff or the plaintiff's agent or attorney, that court shall issue a writ of execution on the judgment, in the following form, as near as practicable:

"The state of Ohio, ... county: To any constable or police officer of ..... township, city, or village; or To the sheriff of ..... county; or To any authorized bailiff of the ..... (name of court):

Whereas, in a certain action for the forcible entry and detention (or the forcible detention, as the case may be), of the following described premises, to wit: ....., lately tried before this court, wherein ..... was plaintiff, and ..... was defendant, ... judgment was rendered on the ..... day of ....., ..., that the plaintiff have restitution of those premises; and also that the plaintiff recover costs in the sum of ..... You therefore are hereby commanded to cause the defendant to be forthwith removed from those premises, and the plaintiff to have restitution of them; also, that you levy of the goods and chattels of the defendant, and make the costs previously mentioned and all accruing costs, and of this writ make legal service and due return.

Witness my hand, this ..... day of ....., ... Judge, ... (Name of court)"

(B) When a judgment of restitution is entered by a court in any action under this chapter against a manufactured home park resident or the estate of a manufactured home park resident, at the request of the plaintiff or the plaintiff's agent or attorney, that court shall issue a writ of execution on the judgment, in the following form, as near as practicable:

"The state of Ohio, ... county; To any constable or police officer of ..... township, city, or village; or To the sheriff of ..... county; or To any authorized bailiff of the ..... (name of court):

Whereas, in a certain action for eviction of a resident or a resident's estate from the following described residential premises of a manufactured home park on which the following described manufactured home, mobile home, or recreational vehicle is located, to wit: ....., lately tried before this court, wherein ..... was plaintiff, and ..... was defendant, ... judgment was rendered on the ..... day of ....., ..., that the plaintiff have restitution of the premises and also that the plaintiff recover costs in the sum of ..... You therefore are hereby authorized to cause the defendant to be removed from the residential premises, if necessary. Also, you are to levy of the goods and chattels of the defendant, and make the costs previously mentioned and all accruing costs, and of this writ make legal service and due return.

Further, you are authorized to cause the manufactured home, mobile home, or recreational vehicle, and all personal property and vehicles of the defendant on the residential premises, to be, at your option, either (1) removed from the manufactured home park and, if necessary, moved to a storage facility of your choice, or (2) retained at

their current location on the residential premises, until they are disposed of in a manner authorized by this writ or the law of this state.

If the manufactured home, mobile home, or recreational vehicle has been abandoned by the defendant and the requirements of section 1923.12 of the Revised Code have been satisfied, you are hereby authorized to cause the sale of the home or vehicle in accordance with division (B)(3) of section 1923.14 of the Revised Code. A search of appropriate public records or other reasonably diligent inquiries reveals the following persons, whose last known addresses are listed next to their names, may continue to have an outstanding right, title, or interest in the home or vehicle: ..... If you are unable to sell the manufactured home, mobile home, or recreational vehicle due to a want of bidders, after it is offered for sale on two occasions, you are hereby commanded to cause the presentation of this writ to the clerk of this court for the issuance of a certificate of title transferring the title of the home or vehicle to the plaintiff, free and clear of all security interests, liens, and encumbrances, in accordance with division (B)(3) of section 1923.14 of the Revised Code.

If the manufactured home, mobile home, or recreational vehicle has been so abandoned and has a value of less than three thousand dollars and if the requirements of section 1923.12 of the Revised Code have been satisfied, you are hereby authorized either to cause the sale or destruction of the home or vehicle, or to cause the presentation of this writ to the clerk of this court for the issuance of a certificate of title transferring the title of the home or vehicle to the plaintiff, free and clear of all security interests, liens, and encumbrances, in accordance with division (B)(4) of section 1923.14 of the Revised Code.

Upon this writ's presentation to the clerk of this court under the circumstances described in either of the two preceding paragraphs and in accordance with division (B)(3) or (4) of section 1923.14 of the Revised Code, as applicable, the clerk is hereby commanded to issue a certificate of title transferring the title of the manufactured home, mobile home, or recreational vehicle to the plaintiff, free and clear of all security interests, liens, and encumbrances, in the manner prescribed in section 4505.10 of the Revised Code.

Witness my hand, this ..... day of ....., ..., ... Judge, ... (Name of court)."

1923.14. Writ of execution enforced.

(A) Except as otherwise provided in this section, within ten days after receiving a writ of execution described in division (A) or (B) of section 1923.13 of the Revised Code, the sheriff, police officer, constable, or bailiff shall execute it by restoring the plaintiff to the possession of the premises, and shall levy and collect the costs and make return, as upon other executions. If an appeal from the judgment of restitution is filed and if, following the filing of the appeal, a stay of execution is obtained and any required bond is filed with the court of common pleas, municipal court, or county court, the judge of that court immediately shall issue an order to the sheriff, police officer, constable, or bailiff commanding the delay of all further proceedings upon the execution. If the premises have been restored to the plaintiff, the sheriff, police officer, constable, or bailiff shall forthwith place the defendant in possession of them, and return the writ with the sheriff's, police officer's, constable's, or bailiff's proceedings and the costs taxed on it.

(B) (1) After a court of common pleas, municipal court, or county court issues a writ of execution described in division (B) of section 1923.13 of the Revised Code, the clerk of the court shall send by regular mail, to the last known address of the titled owner of the manufactured home, mobile home, or recreational vehicle that is the subject of the writ and to the last known address of each other person who is listed on the writ as having any outstanding right, title, or interest in the home or vehicle, a written notice that the home or vehicle potentially may be sold, destroyed, or have its title transferred under the circumstances described in division (B)(3) or (4) of this section.

(2) After receiving a writ of execution described in division (B) of section 1923.13 of the Revised Code, and after causing the defendant to be removed from the residential premises of the manufactured home park, if necessary, in accordance with the writ, the sheriff, police officer, constable, or bailiff may cause the manufactured home, mobile home, or recreational vehicle that is the subject of the writ, and all personal property and vehicles of the defendant on the residential premises, at the sheriff's, police officer's, constable's, or bailiff's option, either to be removed from the manufactured home park and, if necessary, moved to a storage facility of the sheriff's, police officer's, constable's, or bailiff's choice, or to be retained at their current location on the residential premises, until they are claimed by the defendant or they are disposed of in a manner authorized by division (B)(3) or (4) of this section or by another section of the Revised Code.

The sheriff, police officer, constable, or bailiff who removes the manufactured home, mobile home, or recreational vehicle, or the personal property and vehicles of the defendant, from the residential premises shall be immune from civil liability pursuant to section 2744.03 of the Revised Code for any damage caused to the home, any vehicle, or any personal property during the removal. The park operator shall not be liable for any damage caused by the park operator's removal of the manufactured home, mobile home, or recreational vehicle, or, the removal of the personal property or vehicles of the defendant, from the residential premises or for any damage to the personal property and vehicles of the defendant during the time the home, vehicle, or property remains abandoned or stored in the manufactured home park, unless the damage is the result of acts that the park operator or the park operator's agents or employees performed with

malicious purpose, in bad faith, or in a wanton or reckless manner. The reasonable costs for a removal of the manufactured home, mobile home, or recreational vehicle and, as applicable, the reasonable costs for its storage shall constitute a lien upon the home or vehicle payable by its titled owner or payable pursuant to division (B)(3) of this section.

(3) Except as provided in divisions (B)(4) and (5) of this section, within sixty days after receiving a writ of execution described in division (B) of section 1923.13 of the Revised Code, the sheriff, police officer, constable, or bailiff shall commence proceedings for the sale of the manufactured home, mobile home, or recreational vehicle that is the subject of the writ if it is determined to be abandoned in accordance with the procedures for the sale of goods on execution under Chapter 2329. of the Revised Code. In addition to all notices required to be given under section 2329.13 of the Revised Code, the sheriff, police officer, constable, or bailiff shall serve at their respective last known addresses a written notice of the date, time, and place of the sale upon all persons who are listed on the writ of execution as having any outstanding right, title, or interest in the abandoned manufactured home, mobile home, or recreational vehicle.

Notwithstanding any statutory provision to the contrary, including, but not limited to, section 2329.66 of the Revised Code, there shall be no stay of execution or exemption from levy or sale on execution available to the titled owner of the abandoned manufactured home, mobile home, or recreational vehicle in relation to a sale under this division. The sheriff, police officer, constable, or bailiff shall distribute the proceeds from the sale of an abandoned manufactured home, mobile home, or recreational vehicle under this division in the following manner:

(a) The sheriff, police officer, constable, or bailiff shall first pay the costs for any moving of and any storage outside the manufactured home park of the home or vehicle pursuant to division (B)(2) of this section, the costs of the sale, and any unpaid court costs assessed against the defendant in the underlying action.

(b) Following the payment required by division (B)(3)(a) of this section, the sheriff, police officer, constable, or bailiff shall pay all outstanding tax liens on the home or vehicle.

(c) Following the payment required by division (B)(3)(b) of this section, the sheriff, police officer, constable, or bailiff shall pay all other outstanding security interests, liens, or encumbrances on the home or vehicle by priority of filing or other priority.

(d) Following the payment required by division (B)(3)(c) of this section, the sheriff, police officer, constable, or bailiff shall pay any outstanding monetary judgment rendered under section 1923.09 or 1923.11 of the Revised Code in favor of the plaintiff and any costs associated with retaining the home or vehicle prior to the sale at its location on the residential premises within the manufactured home park pursuant to division (B)(2) of this section.

(e) After complying with divisions (B)(3)(a) to (d) of this section, the sheriff, police officer, constable, or bailiff shall report any remaining money as unclaimed funds

pursuant to Chapter 169. of the Revised Code.

Upon the return of any writ of execution for the satisfaction of which an abandoned manufactured home, mobile home, or recreational vehicle has been sold under this division, on careful examination of the proceedings of the sheriff, police officer, constable, or bailiff conducting the sale, if the court that issued the writ finds that the sale was made, in all respects, in conformity with the relevant provisions of Chapter 2329. of the Revised Code and with this division, it shall direct the clerk of the court to make an entry on the journal that the court is satisfied with the legality of the sale and to issue a certificate of title, free and clear of all security interests, liens, and encumbrances, to the purchaser of the home or vehicle.

If, after it is offered for sale on two occasions under this division, the abandoned manufactured home, mobile home, or recreational vehicle cannot be sold due to a want of bidders, the sheriff, police officer, constable, or bailiff shall present the writ of execution unsatisfied to the clerk of the court that issued the writ for the issuance by the clerk in the manner prescribed in section 4505.10 of the Revised Code of a certificate of title transferring the title of the home or vehicle to the plaintiff, free and clear of all security interests, liens, and encumbrances. If any taxes are owed on the home or vehicle at this time, the county auditor shall remove the delinquent taxes from the manufactured home tax list and the delinquent manufactured home tax list and remit any penalties for late payment of manufactured home taxes. Acceptance of the certificate of title by the plaintiff terminates all further proceedings under this section.

(4) Except as provided in division (B)(5) of this section, within sixty days after receiving a writ of execution described in division (B) of section 1923.13 of the Revised Code, if the manufactured home, mobile home, or recreational vehicle is determined to be abandoned and to have a value of less than three thousand dollars, the sheriff, police officer, constable, or bailiff shall serve at their respective last known addresses a written notice of potential action as described in this division upon all persons who are listed on the writ as having any outstanding right, title, or interest in the home or vehicle. This notice shall be in addition to all notices required to be given under section 2329.13 of the Revised Code. Subject to the fulfillment of these notice requirements, the sheriff, police officer, constable, or bailiff shall take one of the following actions with respect to the abandoned manufactured home, mobile home, or recreational vehicle:

(a) Cause its destruction if there is no outstanding right, title, or interest in it;

(b) Proceed with its sale under division (B)(3) of this section;

(c) If there is no outstanding right, title, or interest in the home or vehicle present the writ of execution to the clerk of the court that issued the writ for the issuance by the clerk in the manner prescribed in section 4505.10 of the Revised Code of a certificate of title transferring the title of the home or vehicle to the plaintiff, free and clear of all security interests, liens, and encumbrances. If any taxes are owed on the home or vehicle at this time, the county auditor shall remove the delinquent taxes from the manufactured home tax list and the delinquent manufactured home tax list and remit any penalties for late

payment of manufactured home taxes. Acceptance of the certificate of title by the plaintiff terminates all further proceedings under this section.

(5) At any time prior to the issuance of the writ of execution described in division (B) of section 1923.13 of the Revised Code, the titled owner of the manufactured home, mobile home, or recreational vehicle that would be the subject of the writ may remove the abandoned home or vehicle from the manufactured home park or other place of storage upon payment to the county auditor of all outstanding tax liens on the home or vehicle and, unless the owner is indigent, payment to the clerk of court of all unpaid court costs assessed against the defendant in the underlying action. After the issuance of the writ of execution, the titled owner of the home or vehicle may remove the abandoned home or vehicle from the manufactured home park or other place of storage at any time up to the day before the scheduled sale, destruction, or transfer of the home or vehicle pursuant to division (B)(3) or (4) of this section upon payment of all of the following:

(a) All costs for moving and storage of the home or vehicle pursuant to division (B)(2) of this section and all costs incurred by the sheriff, police officer, constable, or bailiff up to and including the date of the removal of the home or vehicle;

(b) All outstanding tax liens on the home or vehicle;

(c) Unless the owner is indigent, all unpaid court costs assessed against the defendant in the underlying action.

1923.15. Inspection of premises; correcting conditions.

During any proceeding involving residential premises under this chapter, the court may order an appropriate governmental agency to inspect the residential premises. If the agency determines and the court finds conditions which constitute a violation of section 3733.10 or 5321.04 of the Revised Code, and if the premises have been vacated or are to be restored to the landlord, the court may issue an order forbidding the re-rental of the property until such conditions are corrected. If the agency determines and the court finds such conditions, and if the court finds that the tenant or manufactured home park resident may remain in possession, the court may order such conditions corrected. If such conditions have been caused by the tenant or resident, the court may award damages to the landlord equal to the reasonable cost of correcting such conditions.

APPENDIX 2
FRANKLIN COUNTY EVICTION FORMS IN PDF-fillable FORMAT

INSTRUCTIONS
TO THE CLERK
CLERK OF COURT'S OFFICE
FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

_____**Plaintiff**

_____

VS.

_____**Defendant**

_____

_____**Date**

Case No. _____**CV**_____

Signature_____

Attorney Code_____

Attorney for_____

To the Clerk: Please issue

☐ **Writ of Restitution - $35.00 (Includes Service) (Red Tag)**

☐ **Set Out - $45.00(Includes Service)**

☐ **Replevin - $35.00 (Includes Service)**
(You must complete bailiff instructions)

☐ **Execution - $35.00 (Includes Service)**
(You must complete bailiff instructions)

☐ **Execution/Vehicle - $835.00 (Includes Service)**
(You must complete bailiff instructions)

☐ **Exemplified Copy or Certificate of Copy - $20.00**

☐ **Certificate of Judgment - $10.00**

☐ **Revivor - $30.00**
(Up to 3 defendants and/or addresses with 1 type of service)

☐ **Certificate of Judgment to BMV - $10.00**
Date of Loss _____
Date of Birth _____
Social Security # _____
Drivers License # _____
License Plate # _____

☐ **Appeal - $50.00**

☐ **Transfer from Small Claims - $45.00**

☐ **Assignment of Judgment - $20.00**

☐ **Docket Transcript - $20.00**

☐ **Out of County Sheriff - $41.00**
County Name _____

☐ **Post Judgment Motion - $20.00**

☐ **Objection to Magistrate's Report - $20.00**

☐ **Amended Complaint - $20.00**
(plus service fees, if requested)

☐ **Third Party Complaint - $20.00**
(plus service fees, if requested)

☐ **Counterclaim/Crossclaim - $20.00 ea.**
(plus service fees, if requested)

☐ **Order to Show Cause - $50.00**
(Includes Service)

☐ **Ordinary Mail Svc - $3.00 ea.**

☐ **Certified Mail Svc - $6.00 ea.**

☐ **Bailiff Svc - $25.00 ea.**

☐ **Jury Demand Fee - $10.00**

☐ **Jury Demand Deposit - $500.00**

☐ **Other** _____

_____

_____

IN THE COUNTY MUNICIPAL COURT

_____, :

Plaintiff, : **CASE NO.: 20 CVG** _____

v. :

_____, :

Defendant.

REQUEST FOR SET OUT

Pursuant to Local Court Rule 6.08, plaintiff(s) requests the County Service Bailiff's Office to execute upon the plaintiff's Writ of Restitution for the premises known as:

_____

Street/Apartment Number

_____

City State Zip Code

SPECIAL INSTRUCTIONS:

_____

_____

RESPECTFULLY SUBMITTED,

_____

Plaintiff(s) or Attorney for Plaintiff(s)

_____

Address

_____

City, State, Zip Code

_____

Phone Number

IN THE	**COUNTY MUNICIPAL COURT**	
	:	**Case No.**
Plaintiff(s),	**:**	**Magistrate**
v.	**:**	
	:	
Defendant(s).	**:**	

NOTICE OF APPEARANCE OF COUNSEL

Now comes the , by and through its counsel, and hereby designate the undersigned as their legal representative in this matter.

Respectfully submitted,

_____

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon

by regular mail this ____ day of _____, _____
.

_____

IN THE MUNICIPAL COURT OF COUNTY

Plaintiff,	**:**	**Case No.**
v.	**:**	
Defendant.	**:**	

PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL OF CLAIM(S)

NOW COMES THE PLAINTIFF, by and through its counsel, and pursuant to Civ. R. 41(A) hereby dismisses the _____ cause of action, _____ prejudice, against the above-named Defendant(s) in this matter.

Respectfully submitted,

_____

Andrew J. Ruzicho II (0064024)
118 Graceland Blvd., #307
Columbus, Ohio 43214
(614) 447-2365
(614) 340-4626 fax
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent to the party below via first class regular mail this ____ _____day of _____, 20___.

_____

Andrew J. Ruzicho II

IN THE _____ COUNTY MUNICIPAL COURT

_____,	:	
	:	
Plaintiff,	:	
vs.	:	Case No. 2___ CV_____
_____,	:	
	:	
Defendant.	:	

AFFIDAVIT OF _____

STATE OF OHIO)
)SS:
COUNTY OF _____)

1. I, _____, duly sworn, state that I am over 18 years of age and competent to testify in a court of law.

2. I am the property manager/owner for the plaintiff in this case.

3. I posted the three day notice attached to the complaint on _____.

4. At that time, the tenant was behind on rent and the tenant is still behind on rent.

5. The tenant is still located in the premises.

FURTHER AFFIANT SAYETH NAUGHT

_____

Sworn to before me and subscribed in my presence this _____ day

of _____, 2_____.

_____
Notary

My Commission expires:

IN THE FRANKLIN COUNTY MUNICIPAL COURT

_____,	:	
Plaintiff,	:	**CASE NO.: 2 CVG** _____
v.	:	**MAGISTRATE** _____
_____,	:	
Defendant.	:	

AGREED ENTRY

Judgment and restitution of the premises are hereby granted to the Plaintiff. Plaintiff, however, will forego executing upon the judgment if Defendant makes the following payments on or before the times specified. If Defendant fails to make any payment in a timely manner, Plaintiff will proceed with obtaining a writ of restitution and a set out.

$_____ Date_____

$_____ Date_____

$_____ Date_____

$_____ Date_____

_____ Date_____
Plaintiff

_____ _____
Defendant Magistrate

_____ _____
Defendant Judge

_____ _____
Attorney for Plaintiff(s) Attorney for Defendant(s)

IN THE FRANKLIN COUNTY MUNICIPAL COURT

_____,	:	
	:	
Plaintiff,	:	
vs.	:	Case No. 2___ CV_____
_____,	:	
	:	
Defendant.	:	

AFFIDAVIT OF _____

STATE OF OHIO)
)SS:
COUNTY OF _____)

1. I, _____, duly sworn, state that I am over 18 years of age and competent to testify in a court of law.

2. The tenants failed to honor the terms of the agreed entry filed in this case.

FURTHER AFFIANT SAYETH NAUGHT

_____

Sworn to before me and subscribed in my presence this _____ day

of _____, 2_____.

_____
Notary

My Commission expires:

IN THE MUNICIPAL COURT OF COUNTY

Plaintiff,	**:**	**Case No.**
v.	**:**	
Defendant.	**:**	

PLAINTIFF'S MOTION TO CONTINUE HEARING

NOW COMES THE PLAINTIFF, by and through its counsel, and respectfully requests the Court to continue the hearing set for _____ _____, 20_____ until _____ _____, 20___. Plaintiff is attempting to resolve the matter with the tenant and requires additional time to do so.

Respectfully submitted,

_____

Andrew J. Ruzicho II (0064024)
118 Graceland Blvd., #307
Columbus, Ohio 43214
(614) 447-2365
(614) 340-4626 fax
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent to the party below via first class regular mail this ____ _____day of _____, 20___.

_____

Andrew J. Ruzicho II

IN THE MUNICIPAL COURT OF COUNTY

Plaintiff,	**:**	**Case No.**
v.	**:**	
Defendant.	**:**	

ENTRY

For good cause shown, the hearing in this matter is continued until

_____ _____, 2012 at _____ a.m.

_____ _____

Magistrate/Judge Date