

Eviction Glossary

<u>Plaintiff:</u>	The party who files a Complaint.
<u>Defendant:</u>	The party against whom a Complaint is filed.
<u>Complaint:</u>	The document filed to initiate a lawsuit. The Complaint contains allegations against the Defendant and in the case of an eviction Complaint will also include a copy of any written lease and the notice of lease violation (3-day or 7-day notice).
<u>Answer:</u>	The document filed by a Defendant in response to a Complaint.
<u>Affirmative Defenses:</u>	Legal defenses raised in response to allegations in a Complaint which attempt to excuse a Defendant's lease violation.
<u>Summons:</u>	The formal document issued by the Clerk of Court which informs a defendant that a lawsuit has been filed against them, lists the actions a Defendant must take in response to the Complaint along with the deadline for taking those actions, and is served on a Defendant by a Process Server.
<u>Certificate of Mailing:</u>	A certificate issued by the Clerk of Court acknowledging that a copy of the Summons and Complaint have been mailed to the Defendant.
<u>Process Server:</u>	Sheriff's Office or private company who formally delivers the Summons and copy of Complaint to a Defendant.
<u>Service of Process:</u>	Formal delivery of the Summons and Complaint to the Defendant by a Process Server.
<u>Clerk's Default:</u>	Order issued by the Clerk of Court if a Defendant fails to file an Answer by the filing deadline.
<u>Court Default:</u>	Order entered by Court if a Defendant fails to file an Answer by the filing deadline or if the Defendant fails to take other action required by law, rules of procedure, or other order of the Court.
<u>Court Registry:</u>	An account maintained by the Clerk of Court to receive deposits associated with lawsuits or other judicial proceedings. A tenant's rent deposits are made into the Court Registry.
<u>Motion:</u>	A request for an order from the Court.
<u>Motion to Determine Rent:</u>	A Tenant's request for the Court to determine the amount of rent owed to date and the amount to be deposited into the Court Registry in order for the Tenant to avoid entry of a Default.
<u>Legal Holiday:</u>	Holidays observed by the Clerk of Court (check local County's Clerk's Office calendar).

Mediation: A process involving a neutral third party who attempts to help the Plaintiff and Defendant reach a settlement agreement.

Final Judgment: The final order entered by a Judge at the conclusion of the case.

Writ of Possession: Document issued by the Clerk of Court after entry of a final judgment for possession of property. The Writ of Possession directs the Sheriff's Office to remove persons from property and deliver possession to the landlord (or their agent).

Eviction Lawsuit Process

1. Complaint is filed.
2. Summons is issued by Clerk of Court for delivery to Process Server and service on Defendant.
3. Certificate of Mailing is prepared by Plaintiff and delivered to Clerk of Court. The Certificate of Mailing will be issued by Clerk of Court and indicates the date on which a copy of the Complaint and Summons was mailed to the Defendant.
 - a. The Certificate of Mailing is only required if the Plaintiff/Landlord anticipates Service of Process by posting rather than personal delivery. The best practice is to have a Certificate of Mailing issued for each case.
 - b. If Service of Process is accomplished by posting, then Service of Process is effective on the date of posting or on the date of the Certificate of Mailing (whichever occurs last). 5 weekday/non-holidays must elapse from such effective date of service before a Defendant may be defaulted. The Certificate of Mailing is not a substitute for Service of Process.
4. Process Server serves the Summons and Complaint on Defendant.
 - a. In an eviction lawsuit the Process Server can serve the Defendant by posting at the subject property or by personal delivery. The Process Server must make an attempt to serve the Defendant personally before posting is permitted.
 - b. A money judgment might not be obtainable if service is only accomplished by posting.
5. Defendant Response Period
 - a. Within 5 weekday/non-holidays after being served, the Defendant must file a written Answer to avoid entry of a Default.
 - b. If any rent is alleged to be owed in the Complaint, then the Defendant must also do one of the following within 5 weekday/non-holidays after being served to avoid entry of a Default:
 - i. Raise payment of the rent as a defense in the Answer (should also include a copy of payment evidence); or
 - ii. File a Motion to Determine Rent (should also include a copy of evidence in support). A hearing will need to be scheduled for the Court to determine the rent to be deposited into the Court Registry and the amount to be deposited while the lawsuit remains pending; or
 - iii. Deposit the alleged rent into the Court Registry; and
 - iv. Continue to deposit the alleged/determined rent into the Court Registry as the rent accrues until the lawsuit is finished.
 - v. Even if no rent owed allege the rent amount and that rent will accrue at that rate on the first day of each month while the lawsuit remains pending.
6. If no Default is entered, a trial or final hearing must be scheduled and held.

- a. Some counties might require mediation before scheduling a trial.
 - b. Consider use of a Court Reporter at the trial.
7. If final judgment is entered in favor of the Landlord after Default or Trial, then the Clerk of Court will issue a Writ of Possession to be delivered to the Sheriff's Office.
 - a. Sheriff will post Writ of Possession at the subject property and return in 24 hours to return possession to the Landlord. Writ of Possession will list phone number of Landlord contact and Sheriff will call Landlord contact after posting to inform Landlord when Sheriff's Deputy will return to property to enforce the Writ of Possession.
 - b. Landlord to remove any personal property of Defendant remaining in the subject property.
8. After recovering possession, Landlord must send security deposit claim notice to Defendant's last known mailing address if Landlord intends to impose a claim or must return security deposit if no claim is being imposed.