

# OFFICE OF THE ORANGE COUNTY SHERIFF



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## **Eviction Procedure**

### *Notice to the residents of Orange County*

Sheriff Blackwood and the Civil Services Division of his Office are pleased to provide this document to you as a public service. Certainly, the law applicable to Landlord/Tenant relations is complex and detailed. This document is an attempt to provide the Landlord with the procedures whereby an eviction process may be instituted and to provide the Tenant with knowledge of how this process works. Our goal is to ensure a smooth and legal procedure where parties are aware of the duties of this Office in the enforcement of the law. The Sheriff, Clerk of Court, and the Magistrates are unable to provide you legal advice on this or any other matter. The law prohibits anyone from practicing law without a license. If you have legal questions, please contact an attorney.

### *Procedure*

**Step 1:** The Landlord demands the tenant move out, either in person or in writing. If after ten (10) days the tenant fails or refuses to move out, the landlord goes to the Clerk of Court's Office at 106 E. Margaret Lane, Hillsborough, and asks the Clerk for the forms for evictions, which are called **Magistrate's Summons for Summary Ejectments**. The Landlord will complete the forms and all copies. There is a charge of \$ \_\_\_\_ for the court costs and a \$30.00 Sheriff's service fee (per Tenant) that can be paid then or later at the Sheriff's Office when delivering the copies to be served. The summons must be delivered to the Sheriff's Office either by the Clerk or by the Landlord.

**Step 2:** Once delivered to the Sheriff's Office, the summons will be processed and given to a Deputy to serve. The Court date will be set not more than ten (10) days from the issuance

of the summons. Landlord/Tenant cases are usually set on Tuesdays in Hillsborough. The Deputy must mail a copy of the summons to each Tenant in a stamped envelope with the Tenant's address that is provided by the Landlord. The Deputy will serve the summons in one of three ways:

1. By personally delivering the summons to the Tenant(s)
2. By leaving a copy with someone who resides at the residence who is at least 15 years of age
3. By posting a copy of the summons on the door of the residence (after making at least one attempt to serve as set out in 1 or 2 above.

**Step 3:** One the date of the court hearing the Landlord must be present. The Tenant does not have to attend. The magistrate will hear both sides (if both are present) and make a ruling. Should the Tenant fail to appear, the Landlord may win by default.

**NOTE:** The case can be dismissed because:

1. The Tenant has paid
2. The Landlord does not prove their case
3. The Landlord does not show up for the hearing

**Step 4:** If the Magistrate decides in the Landlord's favor, there will be a ten (10) day waiting period in case the Tenant wishes to appeal. The appeal is made to the Clerk of Court in the form of a bond in the amount of the rent owed, which remains with the Clerk until the appeal is resolved. If an appeal is made, then the process moves to Civil District Court. If no appeal is made or is denied by the judge, proceed to Step 5.

**Step 5:** After the ten (10) day waiting period has passed, without an appeal, the Landlord must return to the Clerk's Office to take out the **Writ of Possession for Real Property**, at a cost of \$ \_\_\_\_\_. There will be another \$30.00 Sheriff's service fee (per Tenant). The Writ will be sent to the Sheriff's Office as soon as possible (by the Landlord or via courier mail). Upon receipt of the Writ, the Deputy will prepare a notice to the Landlord and the Tenant(s) advising them of the date and time of the Eviction. The Deputy will mail a copy to both within 24 hours of receipt of the Writ. The Sheriff **MUST** carry out the Writ within five (5) days of receipt, excluding weekends and holidays. The Tenant(s) must be mailed notice at least five (5) days prior to the Eviction.

The deputy may also post or hand deliver the notice to the Tenant(s). The Landlord will also receive a form that must be filled out and returned to the Deputy at the time of the Eviction. On the date of the Eviction, the Landlord, if still proceeding with the Eviction, **MUST** come prepared to change the locks of the residence. If involving mobile homes where the Landlord owns the lot and not the mobile home, the lot itself will be posted so as to

constructively prevent the tenant from entering the lot. In the event the Landlord or their Agent fails to show up at the time of the Eviction the Writ will be returned unserved. If the Landlord wants to cancel the Eviction for any reason, the Landlord must deliver to the Sheriff written notice prior to the moveout either in person or by fax (do NOT mail this notice). Fax number: (919) 732-6403.

**Step 6:** If the Tenant has not already vacated the premises prior to the Eviction date, the Deputy will make demand that the Tenant vacate the premises. Should the Tenant fail or refuse to vacate as directed by the Writ and the Landlord wants them prosecuted for trespassing, the Landlord will be required to go to the Magistrates Office and obtain a warrant for arrest for the charge of trespassing. It is the responsibility of the Landlord to appear in court and testify about this charge. Once the Tenant has been evicted any property that remains in/on the premises may be dealt with as detailed below.

1. The Landlord may wish to leave any property remaining in the residence for seven (7) days after the Eviction. The Tenant must be granted reasonable access to the property during this time for the retrieval of personal property.
2. After the seven (7) days have expired and if property should remain in the residence unclaimed, the Landlord can:
  - a. Dispose of it as trash
  - b. Donate it to charity (the property must be set aside for another 30 days by the charity in case the Tenant wishes to recover it), or
  - c. Sell the property, after giving seven (7) days' notice in writing via first class mail to the Tenant's last known address and can retain any proceeds from sale to satisfy judgement. If judgement is satisfied and there is money left over, the Landlord must return it to the Tenant. If the Landlord cannot locate the Tenant within ten (10) days, then the Landlord will remit the surplus to the County.
3. The Landlord may wish to remove the property and take it to a secure storage place approved by the Sheriff. If this method is used, the Landlord must keep the property in storage for thirty (30) days. The Landlord must advance the cost of removal and storage to the Sheriff.