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Orange County Sheriff's Office

106 East Margaret Lane, Hillsborough, N.C. 27278

Civil Process Division

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Eviction Procedure

NOTICE TO THE CITIZENS OF ORANGE COUNTY

Sheriff Charles Blackwood and the Civil 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 insure a smooth and legal procedure where parties are aware of the duties of this Office in the enforcement of the law. Neither the Sheriff, nor the Clerk of Court, nor the Magistrates may give you legal advice on this or any other legal matter. The law prohibits anyone from practicing law without a license. If you have legal questions, please contact an attorney.

STEP 1: Demand the tenant move out, either in person or **in writing**. If after ten (10) days they fail or refuse to move out, go to Clerk of Court's Office at 106 Margaret Lane Hillsborough and ask Clerk for the forms for evictions, which are called **MAGISTRATE'S SUMMONS FOR SUMMARY EJECTMENTS**. You will need to complete the forms and all copies there. There is a charge of \$_____ for the court costs and a \$30.00 Sheriff's service fee (per defendant) 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 you.

STEP 2: Once delivered to the Sheriff's Office, the summons will be processed and given to a Deputy to be served. The Court date must be set not more than (10) days from the issuance of the summons, the case will be set on a Tuesday in Hillsborough. The Deputy must mail a copy of the summons to each defendant with an envelope addressed, stamped and provided by the Plaintiff (you). The Deputy will serve the summons one of three ways:

- (1) BY PERSONALLY DELIVERING THE SUMMONS TO THE DEFENDANT(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 BY THE FIRST TWO METHODS).

Note: If method 2 is used the landlord may not be able to recover money owed to them. The summons must be served and returned to the Clerk's Office prior to the court date.

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

NOTE: The case can be dismissed because:

- (1) The defendant has paid;
- (2) The landlord does not prove their case; or

(3) The landlord does not show up for the hearing.

STEP 4: IF THE PROPERTY IS AWARDED TO THE LANDLORD, THERE WILL BE A TEN (10) DAY WAITING PERIOD IN CASE THE DEFENDANT WISHES TO APPEAL. The appeal is made to the Clerk of Court in the form of a bond which is the amount of the rent owed, which remains with the Clerk until 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 THEN GO TO **STEP 5.**

STEP 5: After the ten (10) days have passed without an appeal, then you 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 defendant). The WRIT will be sent to the Sheriff's Office as soon as possible (by you or via courier mail). Upon receipt of the WRIT, the Deputy will prepare a notice to the landlord and the defendant(s) that advises 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 DEFENDANT MUST BE MAILED NOTICE AT LEAST (5) DAYS PRIOR TO THE EVICTION.

The notice may also be posted or hand delivered to the defendant by the Deputy. **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 YOU WISH TO CANCEL THE EVICTION FOR ANY REASON YOU MUST DELIVER TO THE SHERIFF WRITTEN NOTICE PRIOR TO THE MOVEOUT EITHER IN PERSON OR BY FAX (***DO NOT MAIL THIS NOTICE.***)

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STEP 6: IF THE DEFENDANT HAS NOT ALREADY VACATED THE PREMISES PRIOR TO THE EVICTION DATE, THE DEPUTY WILL MAKE DEMAND THAT THEY VACATE THE PREMISES. SHOULD THE DEFENADANT 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 RESPOSIBILITY OF THE **LANDLORD** TO APPEAR IN COURT AND TESTIFY AS TO THIS CHARGE. ONCE THE DEFENDANT HAS BEEN EVICTED ANY PROPERTY THAT REMAINS IN\ON THE PREMISES MAY BE DEALT WITH BY ONE OF THREE METHODS.

- (1) The Landlord may wish to leave any property remaining in the residence for seven (7) days after the Eviction. The defendant 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 defendant wishes to recover it) or;
 - (c) Sell the property, after giving seven (7) days notice In writing via first class mail to defendant's last known address) and can retain any proceeds from sale to satisfy judgement. If judgement is satisfied and there is money left over, it must be returned to defendant, if they cannot be located within ten (10) days then the surplus will be turned over to the county funds.
- (3) The Landlord may wish to remove property and take it to a secure storage place approved by the Sheriff. If this method is used, the Landlord must keep it in storage for thirty (30) days. The cost of removal and storage must be advanced to the Sheriff by the Landlord.

