

WORTH COUNTY MAGISTRATE COURT

DIRECTIONS FOR DISPOSSESSORY – TENANT

This pamphlet is for the Tenant, the individual or entity the Landlord is seeking to remove from his property. The Tenant should note whether they are the proper person to the action. The Tenant may choose: to answer, to answer and file a counterclaim or to not answer.

When a Landlord wants a Tenant to move out of a rental property and the Tenant will not move voluntarily, the Landlord must come to court to use the dispossession process for an Order to remove the Tenant from the property.

THE BASICS

Before filing a case, the Landlord must make sure:

The property is located in Worth County;

The Tenant was requested to give up possession of the property and leave;

A Landlord-Tenant relationship exists:

A Landlord/Tenant relationship occurs by: (1) a written lease; (2) an oral lease; (3) being a "Tenant at will", that is, the Tenant occupies the rental without a written lease with the Landlord's consent and pays rent; or (4) being a "hold over Tenant," which is when the Tenant remains on the property after the end of the lease;

The Landlord is the property owner; or

If an agent is used, the agent completes the Rule 31 form, allowing the agent to act on the owner's behalf;

The Landlord has not attempted any form of self-help eviction, such as changing the locks, threatening the Tenant, or suspending utility services. These acts are illegal and may subject the Landlord to a counterclaim for damages by the Tenant.

E-FILING

The Court does not accept electronically file (E-File) documents at this time. The forms required can be obtained in the Magistrate Clerk's office or on the County's website at **www.worthcountyboc.com**.

LANDLORD-TENANT PROCEDURE

Step 1: File Dispossession Affidavit

Where the Tenant has not paid rent or has otherwise breached the lease and refuses to give up possession, the Landlord must file a "Dispossession Affidavit" to remove the Tenant.

The affidavit must be notarized with a signature and seal under oath OR sworn or affirmed by a deputy clerk. The affidavit must: (1) state the property is located in Worth County; (2) list the exact address; (3) name each Tenant; (4) identify the reason why the Tenant should be moved (i.e. nonpayment of rent or breach of lease).

The Court offers **Free Form Generator**, at **www.georgiamagistratecouncil.com** an interactive website to help guide you in writing your answer.

The Landlord can request the Court require the Tenant pay the cost of filing and serving this action.

Step 2: Service

The Tenant must be served with a copy of the dispossession warrant. Service may occur:

Personally, on the Tenant (s);

By being left with a person over 18 years of age at the

Tenant's residence; or

After attempting personal service, by tacking a copy of the affidavit to the Tenant's door AND mailing the Tenant a copy. This is tack and mail service.

Step 3: Tenant's Answer

An Answer is a Tenant's legal reply to the Landlord's dispossessory affidavit. Within 7 days of being served, the Tenant must file an answer to the eviction papers or lose the right to challenge the removal in court. The last day to Answer should be written on the eviction paperwork.

If the Tenant does not file an answer, the Landlord may request to remove the Tenant on the eighth (8th) day. When the Tenant files an answer, the court will set a date for a hearing. In the answer, the Tenant must admit or deny the Landlord's claims and list any defenses or counterclaims for damages.

Inability to pay rent due to illness, lost job or other financial hardship is not a defense to eviction.

If this is the first time in 12 months a Tenant has been served, a Tenant may avoid being evicted by paying all monies owed *plus* the costs of the dispossessory warrant *within* 7 days of being served.

If the Landlord accepts the payment, the Tenant must file an answer stating money was offered and accepted.

If Landlord refuses to accept payment, the Tenant should file an answer stating money was offered, but refused.

If a court finds that a Landlord refused a proper offer of money, the court can order the Landlord to accept payment of rent, late fees and court costs and require that the Landlord allow the Tenant to remain in possession, if the payment is made within 3 days of the court's order.

Repair and Deduct (Counterclaim)

Landlords have a duty to make repairs which result from normal wear and tear. The Tenant cannot withhold rent, but Georgia Courts recognize a Tenant's right to repair and deduct.

When a Landlord fails to respond to a repair request, the Tenant can hire a competent repair person to perform the repairs. The cost must be reasonable, and the Tenant may deduct the cost from the rent. In order to use this counterclaim, put your request in writing, keep all receipts and invoices, hire licensed workers, and perform only needed repairs, not upgrades.

Step 4: Default

If the Tenant fails to appear, the court may grant Judgment in the Landlord's favor.

If the Tenant does not answer within 7 days after service, the Landlord may request a Writ of Possession.

If the Landlord fails to appear, the case will be dismissed.

Step 5: Mediation

Mediation is an option for both parties and allows you to direct the outcome of the case by working with a neutral third person. If an agreement is reached, the case ends.

The Court offers mediation services through the Tifton Judicial Circuit ADR. Parties can request a referral for a mediation session, additional fees may apply. If the parties cannot reach agreement, the case goes to trial.

Step 6: Getting Ready for Trial

Trial is an opportunity for both parties to present their evidence to a judge. Evidence may be presented through documents or witness testimony. You should bring all people who have direct knowledge of the facts related to your case and any documents (the lease, photographs, repair bills, receipts) or other physical evidence you feel will help the Court better understand your case. The Court's ruling will be based on the witnesses and evidence shown at trial.

The Court cannot consider any statements (written or oral) of any person not present at trial. The person or witness must appear in person to testify so that the opposing party can cross-examine (question) them. There are limited exceptions when such evidence will be allowed.

Bring any helpful documents such as your lease, any written notice from your Landlord, and any evidence of your counterclaims.

Step 7: Trial

Arrive early. Immediately before court starts, the Judge will call the calendar. This lets the court know who is present. Parties who miss the call of their case or name run the risk of having their case dismissed or a judgment entered against them.

The Landlord will present its side first, followed by the Tenant. You may question the witnesses and evidence. Any counterclaim will be heard at this time. The burden is on the Landlord to prove the claims on its Affidavit and the Tenant to prove any counterclaims.

To win, the party must show that the weight of the evidence is in its favor.

The Judge will also determine if any money for rent or other charges must be paid and to whom.

Step 8: Writ for Possession

If the Tenant loses after the hearing, the Judge will issue an Order granting the Landlord a writ of possession in seven (7) days. This gives the Tenant 7 days to vacate the property. This 7 day grace period is set by legislature and the Judge cannot change it.

Step 9: Appeal

The Tenant has 7 days from the date of the judgment to file an appeal.

To stay in the home during the appeal, Tenant must pay the judgment and future rent into the registry of the Court. The judgment must be paid at the time of the appeal.

The Tenant must also pay the costs to transfer the case to the State or Superior Court for the appeal.

RESOURCES

The Judges and staff of the Magistrate Court cannot provide legal advice.

Instead, try these:

Law Library, located on the 1st Floor of the Courthouse in the Probate Court Office, offers a place to conduct legal research and find information to assist with your case.

The Uniform Magistrate Court Rules accessed through the Georgia Judicial Gateway's website www.georgiacourts.gov.

Georgia Legal Aid (www.GeorgiaLegalAid.org)

The Georgia Landlord -Tenant Handbook, at [www.dca.ga.gov/housing/HousingDevelopment/programs/downloads/Georgia Landlord Tenant Handbook.pdf](http://www.dca.ga.gov/housing/HousingDevelopment/programs/downloads/Georgia_Landlord_Tenant_Handbook.pdf).

While these publications may be helpful to both Landlords and Tenants, it should not be a substitute for professional legal advice.

DISCLAIMER: The information in this pamphlet is not legal advice. It is intended to give a general overview of the procedures and forms used in the Worth County Magistrate Court. We always suggest that litigants consult with an attorney if they have any questions about what they should do or questions specific to their case.