

# Research Memorandum

TO: ULTRA Drafting Committee  
FROM: Co-Reporters: Sheldon F. Kurtz and Alice M. Noble-Allgire  
DATE: September 13, 2012  
RE: Eviction Survey

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This memo, edited from a memo prepared by my Research Assistants, focuses on five areas of eviction law in California, the District of Columbia, Florida, Georgia, Illinois, Michigan, Minnesota, Montana, New York, Ohio, Oregon, Pennsylvania, Texas, Utah, and Washington. Of these Oregon, Washington, Montana, Michigan and Florida adopted the Uniform Residential Landlord and Tenant Act. The five areas are: (1) the bases for eviction, (2) required notice periods, (3) eviction procedures, (4) defenses to eviction, and (5) treatment of an evicted tenant's personal property after eviction. URLTA does not address these issues. The committee will have to decide whether to address them in RURLTA.

## 1. Bases for Eviction

Commonly, a landlord sues to evict a tenant when the tenant holds over (remains in possession) beyond the lease term or when the tenant breaches a provision of the lease, typically the tenant's obligation to pay rent.<sup>1</sup> Most jurisdictions refer to the landlord's cause of action as "Unlawful Detainer" or "Forcible Detainer."<sup>2</sup> Situations giving rise to these causes of action generally include the following:

- *Holdover Tenancy*: A landlord has grounds to evict a tenant when the tenant continues to occupy the dwelling unit after the original lease term has expired.<sup>3</sup>
- *Failure to Pay Rent*: A landlord may initiate eviction proceedings against a tenant who fails to pay rent as long as the landlord provides the tenant with the required notice.<sup>4</sup>
- *Breach of a Lease Covenant*: If a tenant breaches a condition or covenant in the lease agreement, whether by failing to perform, subletting or assigning the property contrary to the lease, operating a business on the property, or violative conduct, the landlord may initiate eviction proceedings.<sup>5</sup>

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<sup>1</sup> CAL. CIV. PROC. CODE § 1161 (West 2012); D.C. CODE § 42-3505.01(b) (2012) (allowing recovery of possession if tenant is violating a tenancy obligation and fails to correct within 30 days after receiving notice); GA. CODE ANN. § 44-7-50 (West 2012); IL. ST. CH. 735 § 5/9-102 (West 2012); MINN. STAT. ANN. § 504B.285(West 2012); MONT. CODE ANN. § 70-24-422 (West 2012); OHIO REV. CODE ANN. § 1923.02 (West 2012); OR. REV. STAT. ANN. § 90.392(2) (West 2012); 68 PA. STAT. ANN. § 250.501(a) (West 2012); N.Y. REAL PROP. ACTS. LAW § 711 (McKinney 2012) (allowing proceeding to recover possession where lease term has expired or on tenant's failure to pay rent); TEX. PROP. CODE ANN. § 24.002 (West) (2011); UTAH CODE ANN. § 78B-6-802 (West 2012); WASH. REV. CODE § 59.12.030 (2012).

<sup>2</sup> See sources cited *supra* note 3.

<sup>3</sup> See sources cited *supra* note 3.

<sup>4</sup> See sources cited *supra* note 3.

<sup>5</sup> See sources cited *supra* note 3.

- *Waste, Nuisance or Trespass*: A landlord may evict a tenant who “commits or permits waste” on the property, commits a nuisance, or trespasses on the landlord’s property.<sup>6</sup>
- *Criminal Acts*: A landlord may evict a tenant who commits a criminal act on the premises, including public indecency and gang-related activity or violence.<sup>7</sup>

In addition to the foregoing, several states have enacted special instances where the landlord may recover possession. Georgia expressly allows recovery of any “lands or tenements . . . held and occupied by any tenant at will or sufferance . . . when the owner of the lands or tenements desires possession . . . .”<sup>8</sup> D.C. statutes provide a number of very specific situations in which a rental agreement may be terminated and a tenant evicted. These include the owner’s desire for “immediate and personal use and occupancy as a dwelling,”<sup>9</sup> if owner sells the rental unit,<sup>10</sup> for “immediately demolishing the housing accommodation” and building a new construction,<sup>11</sup> rehabilitation of housing accommodation,<sup>12</sup> discontinuing use as rental,<sup>13</sup> and for

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<sup>6</sup> UTAH CODE ANN. § 78B-6-802(1)(f); WASH. REV. CODE § 59.12.030(5–6).

<sup>7</sup> See e.g., D.C. CODE § 42-3505.01(c) (stating that a landlord “may recover possession of a rental unit where a court of competent jurisdiction has determined that the tenant . . . has performed an illegal act within the rental unit . . .” if a 30-day notice to vacate has been served); IL. ST. CH. 735 § 5/9-120 (permitting termination of a lease if the tenant uses or permits the use of the premises to further criminal activity that is a felony or class A misdemeanor); N.Y. REAL PROP. ACTS. LAW § 711 (providing eviction allowed if the premises are used as “a bawdy-house, or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade or manufacture, or other illegal business”); OHIO REV. CODE ANN. § 1923.02 (providing eviction allowed if tenant occupies or permits another to occupy a residential premises located within one thousand feet of any school premises if that individual is a registered sex offender); OR. REV. STAT. ANN. § 90.398 (recovery of possession allowed where tenant “uses, possesses or shares” illegal or controlled drugs and substances so long as notice requirements satisfied and termination no earlier than 48 hours following delivery of notice); OR. REV. STAT. ANN. § 90.396(6) (specifying that landlord may terminate agreement with tenant after just 24 hours notice if tenant acts “outrageous in the extreme,” which may, but does not necessarily include illegal acts); TEX. PROP. CODE ANN. § 91.003; UTAH CODE ANN. § 78B-6-802(1)(g); WASH. REV. CODE § 59.12.030(7). See also 35 PA. STAT. ANN. §§ 780-151#1#79 (Pennsylvania Expedited Eviction of Drug Traffickers Act).

<sup>8</sup> GA. CODE ANN. § 44-7-50.

<sup>9</sup> “A natural person with a freehold interest in the rental unit may recover possession of a rental unit where the person seeks in good faith to recover possession of the rental unit for the person’s immediate and personal use and occupancy as a dwelling. The housing provider shall serve on the tenant a 90-day notice to vacate in advance of action to recover possession . . . . No housing provider shall demand or receive rent for any rental unit which the housing provider has repossessed under this subsection during the 12-month period beginning on the date the housing provider recovered possession of the rental unit.” D.C. CODE § 42-3505.01(d). The 90-day time period is not waived or reset during negotiations to purchase between the landlord and tenant. *Wright v. Thomas D. Walsh*, 856 A.2d 1008 (D.C. 2004).

<sup>10</sup> “A housing provider may recover possession of a rental unit where the housing provider has in good faith contracted in writing to sell the rental unit or the housing accommodation in which the unit is located for the immediate and personal use and occupancy by another person so long as the housing provider has notified the tenant in writing of the tenant’s right and opportunity to purchase . . . . The housing provider shall serve on the tenant a 90-day notice to vacate in advance of the housing provider’s action to recover possession of the rental unit. No person shall demand or receive rent for any rental unit which has been repossessed under this subsection during the 12-month period beginning on the date on which the rental unit was originally repossessed by the housing provider.” D.C. CODE § 42-3505.01(e).

<sup>11</sup> D.C. CODE § 42-3505.01(g). Owner must provide 180-day notice to vacate prior to action to recover for demolition purposes and must inform tenant of right to relocation assistance. *Id.*

<sup>12</sup> Requires 120-day notice prior to an action to recover and landlord must inform tenant of right to relocation assistance. D.C. CODE § 42-3505.01(h).

<sup>13</sup> D.C. CODE § 42-3505.01(i).

conversion to a cooperative or condominium.<sup>14</sup> However, D.C. expressly prohibits a landlord from evicting a tenant when the weather may at any time within twenty-four hours—according to the National Weather Service—drop below freezing.<sup>15</sup> Oregon delineates additional specific bases for eviction, including presence of unauthorized pets,<sup>16</sup> circumstances that may seriously endanger or injure a person on the premises other than the tenant or may inflict substantial damage on premises,<sup>17</sup> or if tenant intentionally provided substantially false, material information on tenant application form.<sup>18</sup> However, in Oregon it appears, a landlord may not terminate a lease for repeated failures of the tenant to pay rent.<sup>19</sup> In Montana, a landlord must allow a tenant to remedy the situation in the case of a material breach of the lease agreement, but if the same act occurs again within six months, the landlord can evict without providing an opportunity to remedy the situation.<sup>20</sup>

## 2. Notice Period

Before a landlord may initiate eviction proceedings, the landlord must give the tenant adequate notice of the tenant's actions constituting breach. Although the obligation to provide notice is universal, across jurisdictions there are differences in the specific details required in the notice, such as what time period is required between notice and an action for recovery of possession.<sup>21</sup> Generally, the notice must be in writing, conspicuously state the grounds for default, state the tenant's rights and obligations concerning the action and defenses, amount of rent landlord seeks to recover, and the ability of the tenant to cure the violation.<sup>22</sup> Such notice periods generally include:

- *One-day (1) Notice*: Oregon provides certain, specific instances where a twenty-four hour notice period is appropriate, including when the tenant, someone under the tenant's control, or a tenant's pet threatens to cause substantial injury to another person or substantial damage to the premises.<sup>23</sup>

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<sup>14</sup> D.C. CODE § 42-3505.01(j). Landlord must provide notice to vacate no less than 90 days after tenant informed of intent to convert premises or before notice period for opportunity to purchase has expired. *Id.*

<sup>15</sup> D.C. CODE § 42-3505.01(k-1). However, a landlord is not prohibited from evicting a tenant during in such conditions if a court has determined the tenant committed an illegal act, a court has determined tenant's actions creates "undue hardship on the health, welfare, and safety of other tenants or immediate neighbors," or if tenant has abandoned the premises. *Id.*

<sup>16</sup> OR. REV. STAT. ANN. § 90.405.

<sup>17</sup> OR. REV. STAT. ANN. § 90.396.

<sup>18</sup> OR. REV. STAT. ANN. § 90.396(5).

<sup>19</sup> OR. REV. STAT. ANN. § 90.392(5)(b).

<sup>20</sup> MONT. CODE ANN. § 70-24-422.

<sup>21</sup> *But see* MINN. STAT. ANN. § 504B.321 (no notice required before a landlord can initiate an eviction action, but tenants receive a longer period to respond to the landlord's complaint than is typically allowed in most jurisdictions).

<sup>22</sup> CAL. CIV. PROC. CODE § 1161(2); D.C. CODE § 42-3505.01(a) (also including a requirement that notice shall be served on the Rent Administrator); FLA. STAT. ANN. § 83.56; MONT. CODE ANN. § 70-24-422; N.Y. REAL PROP. ACTS. LAW §§ 731(2), 732; OHIO REV. CODE ANN. § 1923.04; OR. REV. STAT. ANN. §§ 90.392, 90.394; TEX. PROP. CODE ANN. § 24.005; UTAH CODE ANN. § 78B-6-802(1); WASH. REV. CODE § 59.12.030. *See also Luskey v. Borger Mgmt.*, 917 A.2d 631 (D.C. 2007) (finding if landlord brings action for eviction under one violation of the lease, and the tenant cures the violation before trial, the landlord cannot evict under a different violation of the lease unless the tenant is served a properly with the thirty day notice period).

<sup>23</sup> OR. REV. STAT. ANN. § 90.396.

- *Three-day (3) Notice:* A three-day notice must be given for a tenant’s failure to pay rent, breach of a lease covenant (e.g. subletting contrary to lease agreement, unlawful business on property), committing a crime, committing waste or nuisance, or trespass.<sup>24</sup> In Montana, if noncompliance involves an unauthorized pet or unauthorized persons residing in the rental unit, the notice period is three days and can be cured during that three-day period.<sup>25</sup>
- *Five-day (5) Notice:* In Utah, a landlord must give a tenant at will five days’ notice before eviction.<sup>26</sup> In Illinois, a landlord must give five days’ notice for failure to pay rent, and the landlord must accept payment if the tenant pays in full during that five-day period.<sup>27</sup>
- *Seven-day (7) Notice:* In Florida, certain breaches afford the tenant a seven-day opportunity to cure before the landlord may bring eviction proceedings. Such breaches include “activities in contravention of the lease . . . such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary.”<sup>28</sup> However, if a tenant “destr[oys], damage[s], or misuse[s] . . . the landlord’s or other tenants’ property by intentional act or a subsequent or continued unreasonable disturbance,” a landlord need not give the tenant an opportunity to cure and a tenant must vacate for such noncompliance within seven days.<sup>29</sup> In Oregon, the notice period for a week-to-week tenancy is seven days.<sup>30</sup>
- *Ten-day (10) Notice:* A landlord in Washington must give the tenant a ten-day notice to comply with the terms of a rental agreement or if the tenant commits gang-related activity on the property before eviction.<sup>31</sup> In Pennsylvania, when the landlord seeks eviction of a tenant who has failed to pay rent, notice shall specify that the tenant shall remove within ten days of service.<sup>32</sup> The State also requires that the landlord give a tenant ten days’ notice when the notice to quit is based on a conviction for illegal drug sale, manufacture, possession or distribution on the premises, tenant shall remove within ten days.<sup>33</sup>
- *Fourteen-day (14) Notice:* In Montana, if noncompliance involves a breach of the lease agreement, not including nonpayment of rent, unauthorized pets, or unauthorized persons residing, then the landlord must give a fourteen-day notice.<sup>34</sup>

<sup>24</sup> CAL. CIV. PROC. CODE § 1161(2); FLA. STAT. ANN. § 83.56(3); OHIO REV. CODE ANN. § 1923.04 (providing that Saturdays, Sundays, legal holidays, and the day on which the notice was given do not count towards the three day period); OR. REV. STAT. ANN. §§ 90.392(3), 90.392(6)(a) TEX. PROP. CODE ANN. § 24.005(a); UTAH CODE ANN. § 78B-6-802(1)(c-h); WASH. REV. CODE § 59.12.030(3, 5-6).

<sup>25</sup> MONT. CODE ANN. § 70-24-422(b)(c).

<sup>26</sup> UTAH CODE ANN. § 78B-6-802(1)(b)(ii).

<sup>27</sup> IL. ST. CH 735 § 5/9-209

<sup>28</sup> FLA. STAT. ANN. § 83.56(2).

<sup>29</sup> FLA. STAT. ANN. § 83.56(1).

<sup>30</sup> OR. REV. STAT. ANN. §§ 90.392(3), 90.392(6)(a).

<sup>31</sup> WASH. REV. CODE § 59.12.030(4); IL. ST. CH. 735 § 5/9-209.

<sup>32</sup> 68 PA. STAT. ANN. § 250.501(b). Similarly, New York provides for no less than five days but no more than twelve between service of notice and a hearing on the issue for evictions not based on the nonpayment of rent, while for evictions based on nonpayment of rent, notice is returnable within five days after service. N.Y. REAL PROP. ACTS. LAW §§ 733(2), 732.

<sup>33</sup> 68 PA. STAT. ANN. § 250.501(d).

<sup>34</sup> MONT. CODE ANN. § 70-24-422(d).

- *Fifteen-day (15) Notice:* In Pennsylvania, a one year or less lease term where eviction is not for nonpayment of rent requires that the notice specify that tenant has fifteen days from date of service to remove from the premises.<sup>35</sup>
- *Twenty-day (20) Notice:* A landlord in Washington must give a month-to-month tenant a twenty-day notice.<sup>36</sup>
- *Thirty-day (30) Notice:* In Texas, a landlord must give a tenant a thirty-day notice if the property is foreclosed.<sup>37</sup> In Pennsylvania, a lease with a term longer than one year requires that the landlord give the tenant a thirty-day notice.<sup>38</sup> The general notice period in Oregon is thirty days.<sup>39</sup> In Illinois, thirty-day notice must be given to terminate an oral lease or if the lease is for a term of one month or less.<sup>40</sup>
- *Sixty-day (60) Notice:* In California, a landlord must give a tenant a sixty-day notice if the property is foreclosed.<sup>41</sup>

Often, the state may require that the notice be stated in both English and Spanish.<sup>42</sup> Some states have different notice periods for tenant evictions in manufactured home parks.<sup>43</sup> Additionally, a landlord may not continue with eviction proceedings if the tenant cures the breach within the notice period.<sup>44</sup>

### 3. Eviction Procedures

After the landlord gives the tenant the required notice, and the tenant fails to cure the breach issue, the landlord may file an unlawful detainer or forcible detainer action to begin eviction proceedings.<sup>45</sup> The landlord must first file a complaint with the county court where the property is located. The complaint must state the facts on which the landlord seeks relief, establishing any elements of “fraud, force, or violence,” and any claim for damages.<sup>46</sup> The

<sup>35</sup> 68 PA. STAT. ANN. § 250.501(b).

<sup>36</sup> WASH. REV. CODE § 59.12.030(1)(a).

<sup>37</sup> TEX. PROP. CODE ANN. § 24.005(b).

<sup>38</sup> 68 PA. STAT. ANN. § 250.501(b).

<sup>39</sup> OR. REV. STAT. ANN. §§ 90.392(3), 90.392(6)(a).

<sup>40</sup> IL. ST. CH. 735 § 5/9-209

<sup>41</sup> CAL. CIV. PROC. CODE § 1161b.

<sup>42</sup> See D.C. CODE § 16-1501; *but also see Grimes v. Newsome*, 780 A.2d 1119 (D.C. 2001) (finding if tenant does not speak Spanish, notice’s deficiency in Spanish does not invalidate notice).

<sup>43</sup> For instance, Georgia provides a tenant of a manufactured home has ten days following issuance of a writ of possession in favor of landlord to move property, otherwise landlord may move such property and take a lien on it for moving and storage fees. GA. CODE ANN. § 44-7-59. In addition, Pennsylvania provides notice contingent on time of year, meaning if notice to remove is given after April first but before September first, tenant shall have fifteen days from date of service to remove, while from September first to April first tenant shall have thirty days from date of service. 68 PA. STAT. ANN. § 250.501(c). Finally, New York provides substantially similar bases for eviction for a manufactured home park tenant and eviction procedures, with some notice period differences. N.Y. REAL PROP. ACTS. LAW § 233.

<sup>44</sup> See e.g., CAL. CIV. PROC. CODE § 1161(5); UTAH CODE ANN. § 78B-6-802(2).

<sup>45</sup> CAL. CIV. PROC. CODE § 1161; FLA. STAT. ANN. § 83.56; IL. ST. CH. 735 § 5/9-106; TEX. PROP. CODE ANN. § 24.005; UTAH CODE ANN. § 78B-6-802;

<sup>46</sup> CAL. CIV. PROC. CODE § 1166; D.C. CODE § 16-1501; FLA. STAT. ANN. § 83.59(2); GA. CODE ANN. § 44-7-50; OR. REV. STAT. ANN. § 105.123; UTAH CODE ANN. § 78B-6-807(1); WASH. REV. CODE § 59.12.070.

landlord cannot take possession of the property until the court issues a writ of possession or restitution.<sup>47</sup> However, after filing the complaint, the landlord may move for immediate possession of the property.<sup>48</sup>

The court shall grant the landlord possession of the property if it finds the tenant has breached the lease agreement.<sup>49</sup> Likewise, the court shall also grant the landlord possession should the tenant surrender the property, abandon the property (i.e. be absent from the property for half the periodic tenancy), die, or fail to appear when summoned.<sup>50</sup> Additionally, a landlord may obtain immediate possession of the property if the court finds the tenant “resides out of state, has departed from the state, cannot, after due diligence, be found within the state, or has concealed himself or herself to avoid the service of summons.”<sup>51</sup>

Prior to an order for possession for the landlord, the clerk of court shall issue a writ of possession or restitution to the county sheriff where the property is located.<sup>52</sup> Most, if not all states allow the sheriff to deliver service either by personal delivery or, at least in some circumstances, by first class mail and attachment to premises. Some states, such as Pennsylvania, allow service delivered personally to the tenant or by posting notice conspicuously on the premises regardless of the tenant’s availability.<sup>53</sup> However, other states require personal service if possible and only allow notice by first class mail and posting conspicuously to the premises in situations where the tenant is not in possession of the premises and cannot be found.<sup>54</sup> Some states have additional rules for personal delivery, allowing for delivery to someone other than the tenant who resides at premises who is of reasonable age.<sup>55</sup> Oregon and New York have special requirements that the process server file a certificate of service with the clerk of court.<sup>56</sup> Irrespectively, the sheriff shall then give the tenant written notice to answer the summons and a certain period to vacate the property (such as twenty-four hours).<sup>57</sup>

Several states provide that the time between service of summons and the trial or hearing be expedited and further restrict the availability of continuances.<sup>58</sup> A time of no more than seven

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<sup>47</sup> CAL. CIV. PROC. CODE § 1166a; FLA. STAT. ANN. § 83.59(3); TEX. PROP. CODE ANN. § 24.0061; UTAH CODE ANN. § 78B-6-811; WASH. REV. CODE § 59.12.090.

<sup>48</sup> CAL. CIV. PROC. CODE § 1166a(a).

<sup>49</sup> FLA. STAT. ANN. §§ 83.59(3); OHIO REV. CODE ANN. § 1923.06.

<sup>50</sup> FLA. STAT. ANN. § 83.59(3); UTAH CODE ANN. § 78B-6-816; WASH. REV. CODE § 59.12.120.

<sup>51</sup> CAL. CIV. PROC. CODE § 1166a(a).

<sup>52</sup> CAL. CIV. PROC. CODE § 1166a(a); CAL. CIV. PROC. CODE § 712.010.

<sup>53</sup> 68 PA. STAT. ANN. § 250.501(f); 68 PA. STAT. ANN. § 250.502.

<sup>54</sup> GA. CODE ANN. § 44-7-51(a); D.C. CODE § 16-1502; OR. REV. STAT. ANN. § 90.155(c); OR. REV. STAT. ANN. § 105.135; N.Y. REAL PROP. ACTS. LAW § 735(1)(a). *See also Edelhoff v. Shakespeare’s Theatre*, 884 A.2d 643 (D.C. 2005) (finding service by posting to premises inadequate when landlord knew tenant on vacation, and could otherwise receive service).

<sup>55</sup> D.C. CODE § 16-1502 (allowing delivery on a person above 16 years of age); MINN. STAT. ANN. § 504B.321 (allowing a copy to be left with person of suitable age if tenant cannot be found in the county); N.Y. REAL PROP. ACTS. LAW § 735(1)(a).

<sup>56</sup> OR. REV. STAT. ANN. § 105.135; N.Y. REAL PROP. ACTS. LAW § 725(2) (notice and certificate of service must be filed within three days).

<sup>57</sup> FLA. STAT. ANN. § 83.62; TEX. PROP. CODE ANN. § 24.0061; WASH. REV. CODE § 59.12.090.

<sup>58</sup> MINN. STAT. ANN. § 504B.321 (shortening the period between service of summons and the hearing if the action alleges the tenant is causing a nuisance or is engaged in other illegal behavior that seriously endangers the safety of

days, excluding Saturday, Sunday, and legal holidays, between service and tenant's answer or between service and date of trial is common.<sup>59</sup> New York, however, provides that so long as delivery of service is eight days prior to the hearing, the defendant must answer three days prior to the hearing, and any reply by the landlord must be given one day prior to the hearing.<sup>60</sup> The tenant's answer may provide any legal or equitable defenses or counterclaims.<sup>61</sup> In Montana, the action must be heard within five business days of the date the summons is served if the rental agreement is terminated because of noncompliance due to criminal conduct or gang related activities.<sup>62</sup>

While restrictions on granting a request for continuance are common, the specifics vary between states. For example, New York allows a continuance in the court's discretion if either party shows delay because of the procurement of witnesses, or if all parties agree.<sup>63</sup> Unless all parties agree to a longer period, however, a continuance shall not be longer than ten days.<sup>64</sup> Similarly, in Oregon, a court may grant a continuance—although it shall not be longer than fifteen days—for a tenant to obtain legal services.<sup>65</sup> However, the State does allow a tenant to obtain a continuance for two days, and, if longer, only if tenant pays into court rent as it becomes due.<sup>66</sup> When a court enters a continuance, the tenant usually must pay into court the rent amount as it becomes due.<sup>67</sup>

A writ of possession shall automatically issue when the tenant fails to answer<sup>68</sup> or after a hearing and the judge determines the landlord is entitled to judgment because facts alleged in complaint are true.<sup>69</sup> If judgment is entered for landlord, the landlord shall be entitled to recover

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others or property; a \$500 penalty is assessed against the landlord if the court finds an insufficient basis for an expedited hearing).

<sup>59</sup> D.C. CODE § 16-1502 (“The summons . . . shall be served seven days . . . before the day fixed for the trial of the action.”); GA. CODE ANN. § 44-7-51 (summons shall provide tenant seven days to answer); 68 PA. STAT. ANN. § 250.502 (summons shall require “tenant to appear before the justice of the peace to answer the complaint on a date not less than seven nor more than ten days from the date of summons”); OR. REV. STAT. ANN. § 105.135 (the date of first appearance “shall be seven days after the judicial day next following payment of filing fees,” except where a judge is unavailable or plaintiff requests more time”). See also GA. CODE ANN. § 44-7-53(b) (requiring, if tenant answers summons, every effort to expedite trial).

<sup>60</sup> N.Y. REAL PROP. ACTS. LAW § 743.

<sup>61</sup> *Id.*; GA. CODE ANN. § 44-7-51(b).

<sup>62</sup> MONT. CODE ANN. § 70-24-427

<sup>63</sup> N.Y. REAL PROP. ACTS. LAW § 745(1).

<sup>64</sup> *Id.*

<sup>65</sup> OR. REV. STAT. ANN. § 105.137.

<sup>66</sup> OR. REV. STAT. ANN. §, 105.140.

<sup>67</sup> GA. CODE ANN. § 44-7-54(c) (requiring tenant pay into court all rent and utility payments as they become due if a final judgment cannot be had within two weeks of date of service, and if tenant fails to make payments, landlord shall regain possession of the premises); OR. REV. STAT. ANN. § 105.137 (so long as delay in trial not caused by landlord, tenant shall pay into court rent as it becomes due if it finds doing so would be just and equitable); OR. REV. STAT. ANN. § 105.140; WASH. REV. CODE § 59.18.375.

<sup>68</sup> GA. CODE ANN. § 44-7-53(a); OR. REV. STAT. ANN. § 105.137 (providing if either party fails to appear, the court shall enter a default judgment in favor of the other party); *Brusco v. Braun*, 84 N.Y.2d 674 (N.Y. 1994) (holding if landlord complies with notice requirements and tenant fails to appear, the court has no discretion and must grant judgment for landlord).

<sup>69</sup> OR. REV. STAT. ANN. § 105.145.

possession and to an award for costs and disbursements.<sup>70</sup> The landlord may also obtain other remedies such as double the rent due for holdover,<sup>71</sup> liquidated damages,<sup>72</sup> or a reasonable money judgment.<sup>73</sup> If the court enters a judgment for the tenant, the tenant shall be entitled to recover costs.<sup>74</sup> Some states have special rules on recovery, such as Georgia's statute providing if the method of service is posting to the premises door, if the tenant fails to answer, judgment may award possession but may not award money owed.<sup>75</sup> Some state statutes provide an action to regain possession does not bar subsequent litigation on equitable issues not raised initially due to lack of jurisdiction or for questions of title.<sup>76</sup>

A warrant or writ of possession issued following final judgment is executed by a process server or sheriff to remove tenant and provide landlord with possession.<sup>77</sup> In Pennsylvania,

At the request of the landlord, the justice of the peace shall, after the fifth day after the rendition of the judgment, issue a writ of possession direct to the writ server . . . or sheriff, commanding him to deliver forthwith actual possession of the real property to the landlord and to levy the costs and amount of judgment for damages and rent . . . on the tenant . . . . This writ is to be served within no later than forty-eight hours and executed on the eleventh day following service upon the tenant of the lease premises.<sup>78</sup>

The sheriff must return the writ within ten days of issuance, showing the date, time, place and manner of service, if and how the writ was satisfied, if entry was made, and that expenses and fees have been paid by tenant or by landlord who is entitled to reimbursement.<sup>79</sup> In New York, the sheriff must give the tenant seventy-two hours (excluding Saturdays, Sundays, and legal holidays) notice of the intention to execute the warrant, and shall only execute a warrant between sunrise and sunset.<sup>80</sup> In Oregon, the sheriff must execute the writ immediately and return possession to the landlord by removing the defendant, although landlord may request delay of enforcement of the writ.<sup>81</sup> A writ, in Oregon, expires if not executed within thirty days unless court extends based on good cause showing made by the sheriff.<sup>82</sup>

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<sup>70</sup> D.C. CODE § 16-1503; GA. CODE ANN. § 44-7-55(a); GA. CODE ANN. § 44-7-59 (writ of possession shall be issued to landlord for recovery of lands and "shall not contain restrictions, responsibilities, or conditions upon the landlord in order to be placed in full possession of the land or other property"); OR. REV. STAT. ANN. § 105.145; 68 PA. STAT. ANN. § 250.503(a); N.Y. REAL PROP. ACTS. LAW § 747(1). *But see* OR. REV. STAT. ANN. § 105.137 (not allowing plaintiff to recover attorney fees if defendant did not contest the action).

<sup>71</sup> FLA. STAT. ANN. § 83.58.

<sup>72</sup> FLA. STAT. ANN. § 83.595.

<sup>73</sup> FLA. STAT. ANN. § 83.625; OHIO REV. CODE ANN. § 1923.06 (a separate hearing must be held if the landlord alleges damages in addition to the demand for possession of the property).

<sup>74</sup> D.C. CODE § 16-1503; GA. CODE ANN. § 44-7-55(b); N.Y. REAL PROP. ACTS. LAW § 747(1); OR. REV. STAT. ANN. § 105.145.

<sup>75</sup> GA. CODE ANN. § 44-7-51(c).

<sup>76</sup> D.C. CODE § 16-1505; N.Y. REAL PROP. ACTS. LAW § 747(2); *Davis v. Bruner*, 441 A.2d 992 (D.C. App. 1982).

<sup>77</sup> N.Y. REAL PROP. ACTS. LAW § 749(1); 68 PA. STAT. ANN. § 250.504.

<sup>78</sup> 68 PA. STAT. ANN. § 250.503.

<sup>79</sup> 68 PA. STAT. ANN. § 250.504.

<sup>80</sup> N.Y. REAL PROP. ACTS. LAW § 749(2).

<sup>81</sup> OR. REV. STAT. ANN. § 105.161.

<sup>82</sup> *Id.*

Some state statutes also provide rules for appeal of a judgment determining right to possession. Georgia provides a party seven days to appeal a judgment, but, if a tenant is the appellant, the tenant must pay into court the amount awarded the landlord by the lower court and pay into court all future rent as it becomes due.<sup>83</sup> Pennsylvania's statute is substantially the same as Georgia's, although it provides appellant ten days to appeal (except in limited circumstances when thirty days is allowed for nonresidential leases or instances of domestic violence, discussed *infra*) and allows landlord access to rent paid by tenant into court as it becomes due for actual possession and use of premises during the pending final determination of issues.<sup>84</sup>

Finally, some states have additional provisions for special circumstances, such as enforcing arbitration agreements between landlord and tenant<sup>85</sup> and allowing parties to elect a trial by jury.<sup>86</sup> If the tenant fails to remove from the property within the stated notice period following execution by the sheriff, the sheriff may enter the premises by force and remove the tenant and his property.<sup>87</sup> However, the tenant may contest the eviction by filing a defense with the court within the appropriate time.

#### 4. Defenses to Eviction

A tenant may defend against a landlord's eviction action.<sup>88</sup> Generally, most states allow a tenant to pay past due rent, cure violations, and pay costs of the proceedings to stay the execution of a writ of possession. Illustratively, Georgia allows a tenant to pay all rents allegedly owed and the costs associated with dispossessory warrant within seven days of service of summons, and if landlord refuses to accept, the court shall issue order requiring payment within three days of the order.<sup>89</sup> A landlord is only required to accept such payment once in any twelve-month period.<sup>90</sup> Likewise, in Pennsylvania, a tenant may render a writ of possession of no effect by paying rent in arrears and costs to server of the writ.<sup>91</sup>

Additionally, most of the states surveyed recognize the following defenses to eviction:

- *Domestic Violence*: A landlord may not terminate or fail to renew a lease if the tenant successfully proves he is the victim of domestic violence.<sup>92</sup> To defend on such grounds, the tenant must submit documentation proving the tenant is a victim of

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<sup>83</sup> GA. CODE ANN. § 44-7-56.

<sup>84</sup> 68 PA. STAT. ANN. § 250.513.

<sup>85</sup> OR. REV. STAT. ANN. § 105.138.

<sup>86</sup> N.Y. REAL PROP. ACTS. LAW § 745(1).

<sup>87</sup> UTAH CODE ANN. § 78B-6-812(3).

<sup>88</sup> OHIO REV. CODE ANN. § 1923.061

<sup>89</sup> GA. CODE ANN. § 44-7-52.

<sup>90</sup> GA. CODE ANN. § 44-7-52(a).

<sup>91</sup> 68 PA. STAT. ANN. § 250.503(c). *See also Johnson v. Bullock-Freeman* 2012 Phila. Ct. Com. Pl. LEXIS 186 (2012) (finding in order to stay a writ of possession granted to a landlord, the tenant must pay the back rent and the costs paid, not just the landlord's award from the Philadelphia Municipal Court). The same general rule is applicable in New York, N.Y. REAL PROP. ACTS. LAW § 751(1), and Oregon, OR. REV. STAT. ANN. §, 90.392(4). *See also* OR. REV. STAT. ANN. § 90.396 (allowing removal of pet prior to expiration of notice period to cure violations due to pet but if pet returns, landlord may take possession and tenant loses right to cure violation).

<sup>92</sup> CAL. CIV. PROC. CODE § 1161.3; GA. CODE ANN 19-13-4(a)(5); OR. REV. STAT. ANN. § 90.445(1); TEX. PROP. CODE ANN. § 92.016; UTAH CODE ANN. § 57-22-5.1.

domestic violence—such as a temporary restraining or emergency protective order, or a written police report.<sup>93</sup> The tenant must also verify that the perpetrator is not a tenant of the same dwelling unit.<sup>94</sup>

In California, a landlord may terminate or refuse to renew the lease of a victim of domestic abuse if (1) the tenant allows the perpetrator to visit the property, or (2) the landlord reasonably believes the perpetrator poses a threat to the other tenants.<sup>95</sup> In both cases, the tenant and landlord must provide each other written notice before terminating the lease.<sup>96</sup>

Pennsylvania provides an extended time to appeal—extending the generally applicable ten days after judgment by a lower court requirement to thirty days—for a victim of domestic violence.<sup>97</sup> D.C. allows a tenant to use domestic violence as a defense to dispossessory proceedings.<sup>98</sup> If the eviction is caused by the intra-family offense and the tenant has a protective order requiring the perpetrator to vacate, the victim may not be evicted.<sup>99</sup> If the victim does not have a protective order but has filed for a protective order or has a police report written within sixty days, the court has the discretion whether or not to enter judgment for the landlord in the eviction proceeding.<sup>100</sup> Likewise, terminating the lease on grounds of domestic violence does not relieve the tenant for any unpaid rent.<sup>101</sup>

In Michigan, a tenant only must show a “reasonable apprehension of present danger” to the tenant or his or her child from domestic violence, sexual assault, or stalking to be released from the rental payment obligations.<sup>102</sup> But, the tenant must submit written notice by certified mail to the landlord of the tenant’s intent to seek a release and written documentation that the tenant has a reasonable apprehension of present danger.<sup>103</sup>

- *Sexual Assault*: In Texas, a landlord may not terminate a lease if the tenant or the tenant’s child or ward is the victim of sexual assault or abuse.<sup>104</sup> The tenant, however, must provide the landlord with documentation of the assault or abuse and this documentation must indicate that the acts occurred within the six months preceding the claim of defense.<sup>105</sup> Additionally, a licensed health care services provider, mental health services provider, authorized individual, or a court must issue the documentation.<sup>106</sup>

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<sup>93</sup> See sources cited *supra* note 84.

<sup>94</sup> CAL. CIV. PROC. CODE § 1161.3; *but see* IL. ST. CH. 735 § 5/9-106.2 (providing remedy to the tenant even if the perpetrator of violence is also a tenant of the unit).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*; TEX. PROP. CODE ANN. § 92.016; UTAH CODE ANN. § 57-22-5.1.

<sup>97</sup> 68 PA. STAT. ANN. § 250.513(e). Victims of domestic violence as used in this statute means “A person who has obtained a protection from abuse order against another individual or can provide other suitable evidence as the court shall direct.” *Id.*

<sup>98</sup> D.C. CODE 16-1001(8).

<sup>99</sup> D.C. CODE § 42-3505.01(c-1)(2).

<sup>100</sup> D.C. CODE § 42-3505.01(c-1)(3).

<sup>101</sup> TEX. PROP. CODE ANN. § 92.016.

<sup>102</sup> MICH. COMP. LAWS ANN. § 554.601b

<sup>103</sup> *Id.*

<sup>104</sup> TEX. PROP. CODE ANN. § 92.0161.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

- *Breach of Warranty of Habitability*: In Florida, a tenant may not raise a breach of warranty of habitability as a defense to eviction.<sup>107</sup> Contrastingly, other jurisdictions do permit the tenant to defend on grounds of breach of warranty of habitability if the tenant pays the past-due accrued rent.<sup>108</sup>
- *Retaliation*: A tenant may defend against a landlord’s eviction on grounds the landlord is retaliating against him.<sup>109</sup> However, if the landlord commences the eviction in good faith—including nonpayment of rent, “violation of the rental agreement,” or violation of law—the tenant’s retaliatory defense will be unsuccessful.<sup>110</sup>
- *Familial Status*: A tenant may not be evicted, denied continued tenancy, or denied a renewal of a lease on the basis of familial status unless one year has elapsed from the commencement of the familial status and the landlord has given the tenant six months prior written notice.<sup>111</sup> This cannot be waived by the tenant in the lease agreement.<sup>112</sup>
- *Firearm Prohibition*: In Montana, a landlord may not place a firearm prohibition by contract or otherwise on a tenant.<sup>113</sup> However, a landlord may restrict discharge of a firearm to self-defense purposes only.<sup>114</sup>
- *Military Service*: Special rules for eviction exist for tenants actively serving in the military and their spouse or dependents. For example, a New York statute provides:
  1. No eviction or distress shall be made during the period of military service in respect of any premises occupied chiefly for dwelling purposes by a person in military service or the spouse, children, or other dependents of a person in military service, except upon leave of court granted upon application . . . .
  2. On any such application or in any such action the court may, in its discretion, on its own motion, and shall, on application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of military service, stay the proceedings for not longer than six months . . . or it may make such other order as may be just.
  3. Any person who shall knowingly take part in any eviction or distress otherwise than as provided in subdivision one of this section, or attempts so to do, shall be guilty of a misdemeanor, and

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<sup>107</sup> FLA. STAT. ANN. § 83.51(c). However, a tenant can raise this defense for an action by the landlord to recover unpaid rent. FLA. STAT. ANN. § 83.60.

<sup>108</sup> CAL. CIV. PROC. CODE §§ 1174.2, 1941; WASH. REV. CODE §§ 59.18.090, 59.18.120, 59.28.085.

<sup>109</sup> FLA. STAT. ANN. § 83.64; MINN. STAT. ANN. § 504B.285 (tenant must prove by preponderance that landlord decreased services or increased rent as a penalty for a lawful act of the tenant; the burden shifts to the landlord if notice to quit was served within 90 days of the tenant’s lawful act); MONT. CODE ANN. § 70-24-431 (providing that a landlord cannot retaliate against a tenant for organizing or becoming a member of a tenant’s union or similar organization); TEX. PROP. CODE ANN. §§ 92.331, 92.335.

<sup>110</sup> FLA. STAT. ANN. § 83.64.

<sup>111</sup> MINN. STAT. ANN. § 504B.315

<sup>112</sup> *Id.*

<sup>113</sup> MONT. CODE ANN. § 70-24-110.

<sup>114</sup> *Id.*

shall be punishable by imprisonment not to exceed one year or by fine not to exceed one thousand dollars, or both.<sup>115</sup>

Oregon, on the other hand, simply allows a stay of ninety days if the rent is not more than \$1,200 per month, although a stay of the eviction may be entered, as in New York, if defendant can show ability to pay rent is materially affected by his or her active military service.<sup>116</sup>

## 5. Treatment of Tenant's Personal Property

Once the landlord obtains a court-ordered writ of possession or restitution, and the sheriff executes the writ on the tenant, the tenant must remove his personal property from the leased premises.<sup>117</sup> Failure to do so within the stated notice period allows the landlord or the landlord's designee to physically remove the tenant's personal property.<sup>118</sup> The landlord or his designee may remove the tenant's personal property to or near the property line,<sup>119</sup> to a nearby location, as long as it does not block a public sidewalk or street,<sup>120</sup> to a "suitable location for safe storage,"<sup>121</sup> or a reasonably secure place.<sup>122</sup> If the landlord stores the tenant's personal property in a bonded or insured public warehouse, the warehouseman will have a lien on the property.<sup>123</sup> The landlord may be required to make a detailed inventory of the tenant's property items.<sup>124</sup>

The tenant may recover his personal property at any time before the property is lawfully sold;<sup>125</sup> however, he must pay the reasonable costs associated with removing and storing the property.<sup>126</sup> If the tenant does not seek possession of his property within the required period, or he fails to pay the reasonable costs of removal and storage, the holder of the property may sell

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<sup>115</sup> N.Y. REAL PROP. ACTS. LAW § 309.

<sup>116</sup> OR. REV. STAT. ANN. § 105.111.

<sup>117</sup> MINN. STAT. ANN. §§ 504B.271; 504B.365.

<sup>118</sup> CAL. CIV. PROC. CODE § 1174(e); FLA. STAT. ANN. § 83.62(2); GA. CODE ANN. § 44-7-55(c) ("Any writ of possession . . . shall authorize the removal of the tenant *or his or her personal property* or both from the premises and permit the placement of such personal property on some portion of landlord's property or on other property as may be designated by landlord and as may be approved by the executing officer."). OR. REV. STAT. ANN. §§ 105.165, 90.425; TEX. PROP. CODE ANN. § 24.0061; UTAH CODE ANN. § 78B-6-812(3)(b); WASH. REV. CODE § 59.18.312(1). In Georgia, a landlord is not liable to tenant for damage to personal property and shall not act as bailee of such property. GA. CODE ANN. § 44-7-55(c). *See also Hinton v. Sealander Brokerage*, 917 A.2d 95 (D.C. 2006) (if tenant has not abandoned property, landlord may not destroy or sell tenant's personal property, but must move the property to an outside storage facility).

<sup>119</sup> FLA. STAT. ANN. § 83.62(2).

<sup>120</sup> TEX. PROP. CODE ANN. § 24.0061.

<sup>121</sup> UTAH CODE ANN. § 78B-6-812(3)(b).

<sup>122</sup> WASH. REV. CODE § 59.18.312(1).

<sup>123</sup> TEX. PROP. CODE ANN. § 24.0062.

<sup>124</sup> MINN. STAT. ANN. § 504B.365; MONT. CODE ANN. § 70-24-430; OHIO REV. CODE ANN. § 1923.14;

<sup>125</sup> Several jurisdictions provide the tenant with thirty days to recover his property. *See e.g.*, TEX. PROP. CODE ANN. § 24.0062(e); UTAH CODE ANN. § 78B-6-812(4)(a).

<sup>126</sup> CAL. CIV. PROC. CODE §§ 1174(h), 1965; MONT. CODE ANN. § 70-24-430; TEX. PROP. CODE ANN. § 24.0062(e); UTAH CODE ANN. § 78B-6-812(4)(a); WASH. REV. CODE § 59.18.312(2). Texas allows a tenant to redeem his property without paying removal or storage fees if he collects the property while the landlord, assignee, or warehouseman is removing it from the leased property. TEX. PROP. CODE ANN. § 24.0062

it.<sup>127</sup> However, the tenant must be notified of the sale prior to it occurring.<sup>128</sup> The tenant will then have an opportunity to redeem his property at the sale by paying the reasonable costs of removal and storage.<sup>129</sup> Likewise, the tenant may direct how the property is to be sold to pay for the costs incurred in storage.<sup>130</sup> The tenant may take the rest of his property once sufficient property has been sold to cover these costs.<sup>131</sup> However, a landlord that does not comply with the statutory procedures for removal and disposition of a tenant's personal property may be liable to the tenant for wrongful conversion.<sup>132</sup>

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<sup>127</sup> CAL. CIV. PROC. CODE § 1174(e); TEX. PROP. CODE ANN. § 24.0062; UTAH CODE ANN. § 78B-6-812(4)(b); WASH. REV. CODE § 59.18.312(3).

<sup>128</sup> CAL. CIV. PROC. CODE § 1988; TEX. PROP. CODE ANN. § 24.0062; UTAH CODE ANN. § 78B-6-812(4)(c); WASH. REV. CODE § 59.18.312(3).

<sup>129</sup> UTAH CODE ANN. § 78B-6-812(4)(d).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Shanks v. Wall*, No. G037408, 2008 WL 2521243 (Cal. Ct. App. June 25, 2008).