

**EVICCTIONS
GENERAL INFORMATION**

**LAURA E. ROTH
Clerk of the Circuit Court, Volusia County**



Prior to filing an Eviction Complaint, requirements should be complied with pursuant to applicable Florida Statutes below:

- 1) F.S. 83.20 pertains to Causes for Removal of Tenants
- 2) F.S. 83.56(3) and/or F.S. 83.05 pertains to Eviction for Non-Payment of Rent
- 3) F.S. 83.56(2) pertains to Eviction for Non-Compliance of Lease or Rental Agreement
- 4) F.S. 723 pertains to the Notice requirements for Mobile Home Parks with more than 10 spaces
- 5) F.S. 83.46 pertains to Rent; Duration Of Tenancies
- 6) F.S. 83.56 pertains to Termination Of Rental Agreement
- 7) F.S. 83.57 pertains to Termination Of Tenancy Without Specific Term
- 8) F.S. 83.575 pertains to Termination Of Tenancy With Specific Duration
- 9) F.S. 83.56(5) pertains to Acceptance of Rent or Performance after the Notice is served upon the tenant
- 10) F.S. 83.232 pertains to Rent Paid into Registry of the Court
- 11) F.S. 83.67 pertains to Prohibited Practices

A Three (3) Day Notice form is available on our web site, however, this Notice may NOT be the appropriate Notice for the type of Eviction you are filing. Please research the Florida Statutes, Chapter 83.40 through 83.683 (Residential Evictions), Florida Statutes 83.001 through 83.251 (Non-Residential Evictions) and/or Florida Statutes 723.061 (Evictions involving a mobile home park lot) to make sure you use the correct Notice. Your case may be dismissed by the Judge if the incorrect Notice is used. A variety of Notice forms are available at office supply stores.

FILING INSTRUCTIONS

Complaint forms can be obtained from the office of the Clerk or on our web site at www.clerk.org for the following types of Evictions.

- 1) Eviction for Non-Payment of Rent – Count I (Possession) ONLY
- 2) Eviction for Non-Payment of Rent – Count I & II (Possession & Damages)
- 3) Eviction for Failure to Comply with Lease

Prepare the appropriate Complaint form and submit it to the office of the Clerk of the Court for filing. In order for your Complaint to be processed expeditiously, you must provide the following:

- 1) Submit the original Complaint and attachments (Notice, Lease and any other documents important to the case). Be sure it is signed. Print your name below the signature. If filing via the eportal, follow the eportal filing instructions.
- 2) Submit one copy of the Complaint and attachment for each defendant/tenant and one for yourself. If you want the Clerk to make copies of your Complaint and exhibits prior to filing, the fee is \$.15 per page. ****If you request a copy of a pleading or exhibit AFTER it has become a part of the official record, the fee is \$1.00 per page.**
- 3) Pre-stamped (legal size) envelopes with appropriate postage shall be submitted for each defendant with additional copies of the Complaint and attachments pursuant to Florida Statute 48.183(2).

** When evicting a business, two envelopes and two copies of the Complaint with attachments are required. Address one to the defendant at the address or location as designated in the lease or other agreement. The second is to be addressed to the last known business address pursuant to Florida Statute 83.22(2).

** As of 9/1/2017, when filing an Eviction, customers will have the option of paying \$5.00 per defendant for the Clerk to mail copies of the Summons and Complaint to the defendant(s)/tenant(s).

****Instead of having to provide additional copies, envelopes and postage, the landlord or manager can pay one flat fee of \$5.00 per defendant/tenant and the Clerk will automatically proceed with mailing the copies and preparing the Certificate of Mailing for the court file.**

- 4) Pay the current filing fee and Summons issuance fee. Acceptable forms of payment include: personal check (excluding starter checks) with proper identification and payable to the Clerk of the Circuit Court, cash and credit card (there is a convenience fee for this service).

**Please see fee schedule for filing fee and Summons issuance fee. This can be combined for one check or charge payment.

- 5) Pay the fee for service of the Summons by the Sheriff. Make your check payable to the Volusia Sheriff's Office or Sheriff's Office unless you are using another servicer.

Upon filing your Complaint, the Clerk's office will issue the applicable Summons and forward to the Sheriff with the pre-paid fees.

****Please be advised that an Eviction for Non-Payment of Rent (Count I & II) will have 2 separate Summons issued (Clerk will charge for issuance of 2 Summons for each defendant/tenant) unless you provide your own Summons form with a combination of the two.**

****The benefit to you of issuance of two Summons is that it will allow the Sheriff's Department to post the Five (5) Day Summons without delay if they are unable to locate the defendant/tenant quickly and attempt later to personally serve the Twenty (20) Day Summons (as required by law).**

There are two types of Summons:

- 1) Five (5) Day – Issued when seeking possession of the property.
- 2) Twenty (20) Day – Issued in Conjunction with the Five (5) Day Summons when seeking to obtain a money Judgment for damages and possession.

AFTER SERVICE

Response Filed: When the defendant/tenant files an Answer, deposits rent and/or files a Motion to Determine the Amount of Rent to be paid into the Court Registry, a court date may be set. If a hearing is set, the date will be as soon as possible. Any rent accruing during the pendency of the proceeding must also be deposited pursuant to Florida Statutes 83.60.

NOTE: A service charge for depositing rent into the court registry shall apply.
3% of the first \$500.00 and 1.5% of the balance pursuant to Florida Statutes 28.24(10)

No Response Filed: If the defendant/tenant does not answer, file a Motion to Determine Rent or deposit rent, it will constitute an absolute waiver of defense and an immediate Default and Judgment may be entered without further notice after the following has been presented to the court. (Florida Statutes 83.60)

For Possession of Property ONLY:

- 1) File a Motion for Default and provide a Default.
- 2) File a Non-Military Affidavit if one has not previously been filed in this case.
- 3) Provide a proposed Final Judgment for Possession.

**The Clerk's office will prepare the Final Judgment if you do not have an attorney.

For an award of money damages: In addition to 1 and 2 above, you must:

- 1) File an Affidavit of Proof (available on our website)
- 2) Provide a proposed Final Judgment with the computation of damages as submitted in the Affidavit of Proof, plus costs not awarded in the Judgment for Possession and the attorney fee, if applicable.

**The Clerk's office will prepare the Judgment if you do not have an attorney.

POSSESSION

Once the Judgment has been entered, you may request a Writ of Possession from the Clerk's office. (If the Eviction is for a mobile home belonging to the defendant/tenant and is governed by Florida Statutes 723, the Writ will not be issued for 10 days.) At the time of your request, you may direct the Clerk to forward the Writ to the Sheriff or return it to you for service. The current fee for service of the Writ of Possession is available from the Clerk's Office or Sheriff's Department.

Once the Sheriff has served the Writ of Possession, they will contact you regarding taking possession of the property.

SETTLEMENT

If you and the defendant/tenant have reached an agreement prior to a hearing or entry of Judgment, and you wish to cancel the case, you should submit a Voluntary Dismissal advising the court that the case was settled and you are dismissing it. A copy should be sent to the defendant/tenant.

NOTE: Effective March 31, 1992, Florida Statutes 83.59(2) were revised to read: A landlord's agent is not permitted to take any action other than the initial filing of the Complaint, unless the landlord's agent is an attorney. Refer to Supreme Court Opinion Reference: Volume 18, Number 50, December 10, 1993.

A property manager may handle an eviction as long as it remains an uncontested case. When a hearing is requested, it then becomes a contested case. To ensure that a property manager has the authority to file evictions, the landlord **must give the property manager written authorization to do so. It should be filed with the Eviction Complaint.** The authorization should cover only the completion, signing, and filing of the pleadings necessary to evict a tenant for *Non-Payment of Rent*. The landlord cannot designate the property manager as the plaintiff in an Eviction action or authorize the manager to seek the recovery of past due rent.

ADDITIONAL INFORMATION

The Clerk's office cannot refuse to accept any filing presented to them. A determination regarding the proper filing of a Complaint or pleading will be made by the Judge. You may contact the assigned Judge's office for clarification of his/her requirements.

The Clerk's office cannot recommend an attorney for you. If you do not know of an attorney who will file Landlord/Tenant actions, you should contact the Lawyers Referral Service at 1-800-342-8011