

NOTICE PETITION & EVICTION WARRANT

STANDARD NO(S):

NYSSACD #: 100

DATE:

September 1, 2010

REFER TO:

David Smith

I. OBJECTIVE:

It is the objective of the Civil Division to establish procedures for service of a Notice of Petition and service and enforcement of a Warrant of Eviction. Civil Division members acting pursuant to an eviction proceeding shall serve the Notice of Petition to recover real property according to the time constraints contained in the Civil Practice Law and Rules (CPLR) and Real Property Actions and Proceedings Law (RPAPL). They shall enforce Warrants of Eviction issued by the courts, placing the landlord/petitioner in full possession of the premises by removing all persons and personal property from the premises.

II. DETAILS:

A. Definitions -

1. Notice of Petition and Petition: The Notice of Petition commences an eviction proceeding upon filing the proof of service with the court or court clerk. An Attorney, Judge or the Clerk of the Court may issue a Notice of Petition.
2. Summary Proceeding: Any proceeding by which a controversy is settled, case disposed of, or trial conducted, in a prompt and simple manner, without the aid of a jury.
3. Warrant of Eviction: The Warrant of Eviction is a court order, signed by a judge, after judgment and issued to an enforcement officer. It directs the enforcement officer to put a landlord/petitioner in full possession of particular premises and to remove all persons and personal property.

B. Notice of Petition and Petition –

1. The Civil Division will log the papers and obtain a file number for the eviction and record that number on the papers for service.

2. Obtain at least three (3) copies of the Notice of Petition and Petition for service in the event that personal delivery is not possible. Serve copies-not the original. Payment of fees (see fee schedule) will be required at the time the papers are received.
 - a. Service of the Notice of Petition and Petition is similar to service of a summons. Service may be made in the following manner: (RPAPL §735)
 - i. Personal delivery on the respondent.
 - ii. Service upon a person of suitable age and discretion who resides at or is employed at the property sought to be recovered. A copy of the papers must then be mailed, by certified or registered and regular first class mail, to the respondent at the place to be recovered including zip code and apartment number if applicable within one (1) day of the delivery.
 - iii. If service on the respondent or a suitable person is not possible, service may be completed by affixing the papers on a conspicuous part of the property or by placing the copy under the entrance door of the premises. A copy of the papers must then be mailed, by certified and regular 1st class mail, to the respondent within one (1) day of the delivery.
 - iv. Rules for mailing after service upon a respondent are different for substituted service upon a corporation, joint-stock or other unincorporated association. The mailings must be:
 1. To the property being recovered and if not the same principal place of business, must be mailed to last known principal place of business, or
 2. If place of business is unknown, then the papers can be mailed to any place of business of the corporation within the state.
 3. All mailings including suitable age must contain the zip code.
 - v. When service is complete, file proof of service with the court or clerk within three (3) days.

C. Warrant of Eviction –

1. The original Warrant of Eviction and four (4) copies must be signed by a judge and directed to the Sheriff. The papers must contain a good description of the property.
2. Payment of fee's (see fee schedule) will be required at the time the papers are received. Additional costs or expenses incurred during the service and enforcement of the papers will be charged to the Plaintiff.
3. Ensure that the papers have the Petitioner or attorney name and telephone number so that they may be notified quickly when the paper is served.
 - a. When papers are received the Civil Office shall attempt to determine as much information about the tenant as possible. Copies of the eviction procedures sheet should also be given to the plaintiff/attorney bringing the paper to us.
4. When receiving papers for service on a person who resides in a secured apartment building do not leave the papers at the perimeter entrance. Continue to make attempts.
5. The Civil Division Deputy will put the date and time of service on the Notice of Eviction which will start the 72-hour clock for the warrant.
6. When service is complete contact the petitioner or attorney with the date and time which the tenant has to vacate the premises. Notify the attorney or landlord of any required provisions and additional costs that may be incurred. Ascertain whether the person(s) being evicted are indigent, in need of shelter or if there are unattended children or pets in the residence.
 - a. Obtain a name and number of the contact person who the Civil Office will notify when the eviction is scheduled.
 - b. Enlist the assistance of other agencies such as the County Department of Social Services or the Dog Control Officer.
7. Once the eviction is posted, the Petitioner or his representative should be advised not to enter the property until the day of the eviction, in the presence of a deputy.
8. The Petitioner is responsible for making arrangements for the removal of the tenant's property from the premises ensuring storage of the property and encouraging use of a "bonded" moving and storage company. Property is not to be placed curbside.

- a. The Petitioner is responsible for having the locks to the premises changed after the property has been removed.
 - b. The Petitioner is responsible for the removal of any vehicle from the property where an eviction warrant is enforced. The vehicle towed from the property will be stored at a facility where the tenant will be able to obtain access to the vehicle.
9. If there is any threat of violence or a record of weapons in the residence, special preparations must be taken to ensure the safety of the people involved and the Civil Division members.
 - a. Road Patrol Division may be called to assist and provide additional security.
10. The Civil Officer and/or Civil Division Deputy will respond to the site of each eviction on the scheduled day. If the landlord/attorney wants to cancel, he must do so in writing by fax or call the office with a letter to follow. Wait until receipt of the letter before making a return.
 - a. If the Civil Division responds to a scheduled eviction and the landlord/plaintiff or plaintiff's representative does not show, they will be subject to extra charges for rescheduling.
 - b. Continue to make contact with landlord/attorney for the letter stating it has been canceled, or postponed, before making the return.
11. The Civil Division will send two personnel to each eviction. If the eviction process takes longer than the deputy's normal workday or if additional deputies are required for security purposes, additional labor costs will be charged.
12. The eviction may only be conducted between sunrise and sunset and may not be conducted on a Sunday or other religious Sabbath. It is the landlord's responsibility to have sufficient equipment and personnel to complete the eviction prior to sunset of the scheduled day of eviction. Special arrangements for security may be required, with the landlord-plaintiff, if an eviction cannot be completed by sunset.
 - a. The tenant must have access to their belongings. The locks should not be changed until the eviction is completed.
 - b. Arrange with the movers, a time to conclude the eviction on the next business day.
13. If we receive a stay order on an eviction we will stop all proceedings.

14. The deputies are there to see that the warrant is enforced. It is not their job to personally remove the tenant's possessions. If contraband, illegal drugs or weapons are discovered during the removal process, Road Patrol Division Deputies must be called immediately to initiate an investigation.
15. A visual inventory is required of a commercial eviction, by video camera or still photography. The deputy enforcing the warrant will document the property and the premises with video camera or still photography prior to anyone entering the premises.
16. Hazardous materials such as chemicals or asbestos may **not** be taken into our custody for safekeeping. The plaintiff is responsible for the expenses incurred in the removal of any hazardous materials. Once the deputy determines that hazardous materials may be present he/she shall immediately notify the local fire department and code enforcement offices and advise them of the situation (See "**Hazardous Materials Incidents**", this manual) The Road Patrol Division or local police should be notified if the situation requires restriction of traffic or threats to any public safety. The plaintiff will be required to contact a local hazardous waste removal firm to remove the material.
 - a. Property, such as legally possessed weapons or prescription drugs shall be held for safekeeping. When taking property into our custody, processing, security and storage will be in accordance with the following steps:
 - i. List the property on a Property Receipt/Evidence Log and Tracking Form.
 - ii. If property is turned over to the SCSO Property Evidence Room the Property Receipt/Evidence Log and Tracking Form will accompany such property and secured in a temporary storage locker at the LEC for processing.
 - iii. Notify the respondent how to claim property held for safekeeping.
17. After the eviction has been completed and the premises have been returned to the landlord or a representative, the eviction warrant will be returned to the issuing court with an appropriately worded affidavit.
18. Rules for service and execution for manufactured homes are:
 - a. A person who rents a manufactured home receives the standard 72-hour notice of eviction.

- b. A person, who rents space in a mobile home park (3 or more mobile homes) for the purpose of parking a mobile home, must receive a 90-day notice of eviction. This can be reduced by the court to a 30-day notice, if the court believes that other tenants would be threatened by the conditions that allowed the eviction, or for default in payment of rent.
 - i. In an eviction from a mobile home park, the landlord must make special arrangements, in advance, for special equipment necessary to remove the mobile home and obtain space to which the mobile home can be moved. Special provisions may be required to disconnect utilities such as water, electricity, telephones, and sewers. Road Patrol Division personnel may be required for traffic control to facilitate the removal of the mobile home from the property.

19. Eviction: Mortgaged Property Foreclosure (RPAPL 221)

- a. When a court directs possession of mortgaged property to a person and the possessor withholds possession, the court may order the Sheriff to put that person into full possession.
 - i. This order shall be executed as if it were an execution for the possession of the property.
 - 1. 72-hour notice is not required.
 - a. A tenant of mortgaged property that was not joined in the foreclosure action cannot be compelled to surrender possession under this section. Due process requires that the tenant can be removed only as a result of an eviction action or summary holdover proceeding.
 - 2. Remove all persons and put the petitioner into full possession of the real property.
 - 3. This eviction procedure is not subject to the sunrise to sunset provisions of RPAPL section 749.2.