

UNLAWFUL DETAINER: INSTRUCTIONS

Example: You own or rent a house. You allowed another person (e.g., adult family member; boyfriend/girlfriend) to move in, and s/he has been living there for several months. S/he is not paying rent and is not obligated to pay rent. You would now like this person to move out, but s/he refuses.

Note: It is highly recommended that at least a few days prior to filing a complaint, you provide the person you are seeking to remove a letter directing that person to vacate the premises. This way, your intent will be clear. S/he may then leave, making a lawsuit unnecessary.

The **UNLAWFUL DETAINER** packet contains these instructions plus the following forms:

- Non-Attorney Designation of Email Address
- Complaint for Unlawful Detainer
- Summons for Unlawful Detainer
- Notice of Hearing
- Final Judgment for Unlawful Detainer
- Writ of Possession
- Motion for Clerk's Default
- Affidavit of Military Service
- Motion for Default Final Judgment
- Notice of Voluntary Dismissal

The following form is available for Defendants on the Clerk's website and is separate from the packet:

- Answer
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READ ALL OF THE INFORMATION AND INSTRUCTIONS BEFORE COMPLETING THE FORMS AND SUBMITTING THEM FOR FILING.

DO NOT SIGN ANY DOCUMENTS THAT REQUIRE A NOTARY OR DEPUTY CLERK SIGNATURE UNTIL YOU ARE IN FRONT OF THE NOTARY OR DEPUTY CLERK.

RETAIN COPIES OF ALL FORMS FILED FOR YOUR OWN RECORDS.

DOCUMENTS MUST BE LEGIBLE. TYPE OR WRITE CLEARLY IN BLACK OR BLUE INK.

FEES PAID TO THE CLERK'S OFFICE:

- Filing fee: **\$300.00**
- Summons issuance fee: **\$10.00** per summons issued

Copying fees (if necessary)

- Copying fee for any documents not yet filed: **\$0.15** per page
- Copying fee for any documents already filed: **\$1.00** per page

Note: Payments to the **Brevard County Clerk of Court** may be made by cash, personal check, cashier's check, money order, or credit card.

FEES PAID TO THE SHERIFF'S OFFICE (ONLY IF A PRIVATE PROCESS SERVER IS NOT USED):

- Sheriff's fees for summons: **\$40.00** per summons issued.
Note: A Private Process Server may be used to issue the summons instead of the Sheriff's Office. A listing of Private Process Servers can be found at this site:
<http://brevardclerk.us/list-of-process> (click on PDF link at the top of page)
- Sheriff's fees for a Writ of Possession: **\$90.00**.

(Note: Payments to the **Brevard County Sheriff's Office** may be made by cash, cashier's check, certified check, money order, or credit card. **Personal checks are not accepted.**)

UNLAWFUL DETAINER FILING PROCESS

Step 1: Does Defendant have a residential rental agreement?

If the answer to the question above is yes, an Unlawful Detainer complaint may not be filed. An Eviction complaint should instead be filed.

Step 2: File Case with Clerk's Office

Complete and file the following forms with the Clerk's Office:

FORM: Complaint for Unlawful Detainer

- The original is filed with the Clerk's Office. Retain a copy for yourself. Copies are served on each Defendant by the Sheriff's Office or by a private process server.

FORM: Summons for Unlawful Detainer

- The original is filed with the Clerk's Office. Copies are served on each Defendant.

FORM: Non-Attorney Designation of Email Address

- Complete this form and file the original with the Clerk's Office if you want to elect to serve and receive documents by e-mail.

Step 3: Obtain Judgment

IF RESPONSE BY THE DEFENDANT(S):

If the Defendant(s) file(s) an Answer to your Complaint within five (5) days of the Defendant(s) being served (not including Saturday, Sunday or legal holidays), contact the Judicial Assistant (JA) for the Judge assigned to your case to obtain a hearing date. Once you have that information, complete and file the following forms:

FORM: Notice of Hearing

- File the original with the Clerk's Office, retain a copy for yourself, and mail or deliver copies to the Defendant(s).

FORM: Final Judgment for Unlawful Detainer

- If the Final Judgment for Unlawful Detainer is signed by the Judge, the original will be filed with the Clerk's Office. You must provide pre-addressed stamped envelopes so that copies of the Final Judgment can be delivered to the Defendant(s) and yourself. If you have elected to receive documents by e-mail service, you should receive the signed Final Judgment via e-mail.

FORM: Writ of Possession

IF NO RESPONSE BY THE DEFENDANT(S) BUT THE DEFENDANT(S) HAS/HAVE VACATED THE PREMISES:

If the Defendant(s) has/have not filed a response to your complaint within five (5) days of the Defendant(s) being served (not including Saturday, Sunday or legal holidays), and the Defendant(s) has/have permanently vacated, you may complete and file the following form:

FORM: Notice of Voluntary Dismissal

IF NO RESPONSE BY THE DEFENDANT(S) AND THE DEFENDANT(S) HAS/HAVE NOT VACATED THE PREMISES:

If the Defendant(s) has/have not filed a response to your complaint within five (5) days of the Defendant(s) being served (not including Saturday, Sunday or legal holidays), but the Defendant(s) has/have not vacated, complete and file the following forms:

FORM: Motion for Clerk's Default

FORM: Affidavit of Military Service

FORM: Motion for Default Final Judgment

FORM: Final Judgment for Unlawful Detainer

- If the Final Judgment for Unlawful Detainer is signed by the Judge, the original will be filed with the Clerk's Office. You must provide pre-addressed stamped envelopes so that copies of the Final Judgment can be delivered to the Defendant(s) and yourself. If you have elected to receive documents by e-mail service, you should receive the signed Final Judgment via e-mail.

Note regarding the Writ of Possession

If a Writ of Possession is presented to the Sheriff's Office (after being signed by the Clerk's Office), the Defendant must vacate the property within 24 hours of notice provided by the Sheriff's Office. The Sheriff's Office charges the Plaintiff \$90.00 for this service.

However, the Plaintiff is not obligated to use this service. Sometimes a Defendant will simply vacate upon receipt of a copy of the Final Judgment for Unlawful Detainer. The Plaintiff can always present the Writ of Possession to the Sheriff's Office if the Defendant does not vacate promptly.