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.

Step 7: Trial

Arrive early. Immediately before court starts, the case manager 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 by whom.

Step 8: Writ of Possession

After the hearing, if the Tenant loses, the Judge will issue an Order granting the Landlord a Writ of Possession. 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.

How to Execute a Writ of Possession Checklists:

Following Judgment by the Court, the Landlord must:

[ ] wait seven (7) days to request the Writ

[ ] include the case number

[ ] pay the $75.00 Fee (personal checks not accepted)

[ ] include an email address

[ ] match the names of the Tenants and the property address on the Dispossessory Affidavit with those on the Writ Application. The addresses must be the same or the application cannot be processed.

If the Tenant failed to answer the Dispossessory Affidavit within seven (7) days:

[ ] include an **Affidavit of Non-Military Service**. You may request a form from in TG100. This form is mandatory to process your Writ. The affidavit must be notarized.

[ ] Corporations **do not** need to submit an Affidavit of Non-Military Service

If you are applying for a Writ based on the Tenant's failure to comply with a Consent Judgment/Order/ Agreement:

[ ] Obtain an **Affidavit of Non-Compliance** from the Deputy Clerk and submit a notarized copy with your application. You must clearly state how the Tenant failed to meet the terms of the Order/Agreement.

If your WRIT was signed over 60 days ago, you will have to refile to certify the above is still true.

After the Court processes your writ application, the Marshal's Department will call you to schedule the eviction. You must make arrangements to have the Tenant's items removed, if they have not voluntarily left the premises.

Step 9: Appeal

The losing party has 7 days from the date of the judgment to file an appeal. In order to maintain possession of the property during the appeal, the 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 appealing party must also pay the costs to transfer the case to the State or Superior Court for the appeal.

An appeal will only stop an eviction if there is an order to require the payment of rental or market value of the property into the registry and the Tenant complies with that order every month as long as the appeal is pending.

RESOURCES

The Judges and staff of the Magistrate Court cannot provide legal advice. For questions, please visit www.georgialegalaid.org/eviction OR the Georgia Landlord -Tenant Handbook, at 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.*

FULTON COUNTY MAGISTRATE COURT

LANDLORD-TENANT (DISPOSSESSORY ACTIONS)

LANDLORD PAMPHLET

Chief Magistrate
Judge Cassandra Kirk

Justice Center Tower
185 Central Avenue S.W.
Atlanta, GA 30303

HOURS OF OPERATION
Monday - Friday
8:30am – 5:00pm

CONTACT
Telephone: 404-613-5360

www.magistratefulton.org/dispossesory.php

An Innovative, Efficient and Accessible Court

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 Fulton County Magistrate Court. Consult an attorney with specific questions about your case.

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 Dispossessory process to seek an order to remove the Tenant from the property. This pamphlet is for the Landlord, the individual or entity seeking to remove a Tenant from your property.

As the Landlord, you are the plaintiff and are responsible for how this matter moves through the court. You must identify the correct Tenant, file the action and serve the Tenant(s). The Tenant may choose to: 1) answer, 2) answer and file a counterclaim or 3) not answer. After completing your part, the Court will schedule your case based on the Tenant's response.

THE BASICS

Before filing your case, make sure:

- The property is located in Fulton County;
- You requested that the Tenant give up possession of the property and leave;
- You have a Landlord-Tenant relationship with the person you are seeking to remove;

  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 but with your consent and pays rent; or (4) being a "hold over Tenant", which is when the Tenant wrongfully remains on your property after the end of the lease.
- You are the property owner; or if you are the agent for the owner , complete the Rule 31 form allowing you to act on the owner's behalf;
- You have 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 you to a counterclaim for damages by the Tenant.

LANDLORD-TENANT PROCEDURE

Step 1: File Dispossessory Affidavit

Where the Tenant has not paid rent or has otherwise breached the lease and refuses to give up possession, you can file a "Dispossessory 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 Fulton 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 the Free Form generator, an interactive website to help guide you in writing your affidavit.
- As the Landlord, you 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 dispossessory Affidavit. 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 after being served, the Tenant must efile 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 efile an answer, you may request to remove the Tenant on the eighth (8th) day. If the Tenant efiles an answer, the court will set a date for a hearing and notify you of the date by mail. In the answer, the Tenant must admit or deny the Landlord's claims, list any claimed defenses or counterclaims for damages. ***Inability to pay rent due to illness, lost job or other financial hardship is not a sufficient defense to eviction.***

A Tenant cannot be evicted if this is the first time in 12 months that he has been served with eviction papers *and the Tenant pays* all monies owed *plus* the costs of the dispossessory warrant *within* 7 *days of being served.*

If the Tenant pays you, you may dismiss the affidavit.

E-FILING

The Court requires parties to electronically file (E-File) documents into the Court's case management system. You can register for e-filing using www.odysseyefilega.com. The clerk's office, located in Suite TG-100 in the Justice Center Tower, has public access terminals which allow you to e-file for free. If you e-file elsewhere, there is a fee. The Court's website has a link to check the status of your case.

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, you 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 for free on the day of the hearing. 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