

Writ of Possession in Unlawful Detainer

(§ 8.01-470 & 472) The Writ of Possession in Unlawful Detainer is a court order authorizing the Sheriff to physically remove a person and his belongings from the premises and to return possession to the landlord. Usually the court will not issue the Writ of Possession until the appeal period has lapsed. The appeal period is ten (10) days except when the landlord has asked for immediate possession at the hearing, the ten (10) day appeal period is waived. (§ 8.01-129) There are certain qualifications which must be met in order to obtain a waiver of the appeal period and it is strongly suggested the tenant consult an attorney. **Do not confuse** the waiver of the appeal to mean waiver of the 72 hour notice which will be covered later.

Time period for Executing Writ:

This writ gives the Sheriff (30) thirty days in which to execute, however, our office expedites these processes since each day the tenant remains on the property the greater the loss by the landlord. Effective July 1, 2000, this code, §8.01-470, has been modified to read, “The execution of the writ of possession by the sheriff should occur within (15) fifteen calendar days from the date received by the sheriff, or as soon as practicable thereafter, but in no event later than thirty (30) days from the date the writ of possession was issued.” While this change speeds up the eviction process, it allows for discretion as well.

It is important to remember the date the Writ was issued should a postponement be requested after scheduling the eviction. This will be discussed in detail later §8.01—470, 471

At the time the landlord requests issuance of the Writ of Possession, he may also request a Writ of Fieri Facias to cover any damages and costs. We would recommend a levy at the time of eviction **only** if the tenant were present and the plaintiff plans to do a lock out versus a move out. At that time, the deputy would inventory the property and inform the tenant that he must notify the plaintiff and our office of the location of the levied property. Failure to notify our department could result in prosecution under §18.2-101.

72 Hour Notice:

The 72-hour notice is not to be confused with the 10-day appeal period. Many landlords confuse the waiver of the 10-day appeal period to mean the 72 Hour Notice has also been waived, thereby, expecting the Sheriff to execute the Writ the moment he receives it. The codes relating to the 10-day appeal period and the 72 Hour Notice are covered under two different code sections. Therefore, unless the judge, in writing, waives the 72 Hour Notice to the tenant, the Sheriff must follow the code.

The moment the Sheriff receives the Writ from the Court, the Writ is entered into the computer. The Sheriff has no control over how long it takes a Writ to come down from the court to his office. Processes are picked up twice daily from the court, early in the morning and again at 12:00 p.m. If the court issues a Writ after 12:00 pm the Sheriff will not get it until the following morning.

After entering the Writ of Possession into the computer, the assigned zone deputy will call the landlord to arrange the eviction date and time. Therefore, it is important the landlord write any and all phone numbers on the Writ so the Sheriff can contact him for scheduling. If the landlord's phone number is

not written on the Writ, the Sheriff will mail notification to him to request a call to our office for scheduling. Valuable time is lost and it is possible the Writ could expire before ever scheduling the eviction.

Once a mutually agreeable time has been set, the deputy will prepare the 72 HOUR NOTICE TO VACATE which is issued by the Sheriff. The date and time of the eviction must be noted on the form. The notice is then posted by the deputy. Pursuant to §8.01-470, the notice must be served according to the laws relating to service of process. This is especially important if the landlord is trying to evict a business where the owner has left property inside but is no longer operating the business. If this should occur, the landlord may want to consult an attorney because service at the business cannot be affected and would have to be directed to the owner's home. Other remedies may also be available to the landlord.

Postponement and Cancellation of Scheduled Eviction:

Postponing the Writ can be defined as rescheduling the eviction date to another day. If the first scheduled date is postponed and rescheduled to a later date and time, the 72 Hour Notice must be served again giving the new date, allowing at least an additional 72 hours notice to the tenant. In addition, the landlord must pay \$12.00 per tenant being served with the Notice. Payment of the additional fees must be made before service of the second notice. Only one postponement is allowed by the plaintiff. If the writ is not executed after the second posting, the plaintiff would be required to obtain a new writ.

Canceling the Writ means the landlord no longer wants to evict the tenant or the tenant has already moved out and there is no need for assistance by the Sheriff.

If the eviction being done is a move out:

The Sheriff reserves the right to postpone or cancel a scheduled eviction due to inclement weather. Generally speaking, if it is raining, snowing, or there are gale force winds, then the eviction will be postponed and rescheduled for another day. No additional fees will be required if the Sheriff postpones the eviction due to inclement weather.

Duties of the Landlord:

Arrive on time. The deputy will wait for about 10 minutes if the landlord is running late. However, after 10 minutes the deputy will leave the scene. Communication is the key here. Let the Sheriff know if there is an emergency situation. The deputy will try to work with the landlord but he will not wait any longer than 10 minutes if we have not heard from the landlord.

If the landlord wants assistance by the Sheriff, the landlord or his agents must not enter the dwelling until the deputy has arrived. Entering before the deputy has arrived will result in the Sheriff canceling the Writ and no performance of the eviction. This is done to ensure both the landlord's safety and the safety of the deputy, but moreover, to limit liability to the Sheriff and the landlord by false accusations made by disgruntled tenants. If the landlord starts moving property out before the Sheriff arrives, he cannot ensure the eviction has been done in a lawful manner and will back out, stating the landlord has taken action without the assistance of the Sheriff.

Any knowledge the landlord has about the tenant is helpful to the deputy. It is important for the Sheriff to know if the tenant may have any weapons in the dwelling, or if the tenant has been arrested for assault, or believed to be dealing drugs. Incidental information, such as inoperative cars, pets, water beds and juveniles left alone are important because they can prolong the eviction and may necessitate additional preparation by the landlord or Sheriff (animal control). If the landlord knows the tenant has changed the locks, the landlord may want to have a locksmith available at the appointed time in the case of a move out. In the case of a lock out, the landlord should have a locksmith or be prepared to change the locks himself at the appointed time.

The landlord must supply sufficient personnel (movers) to allow speedy removal of the property. The deputy, at his discretion, can postpone the eviction for lack of sufficient personnel. If the eviction is postponed for lack of sufficient personnel, the landlord will be required to pay additional fees for the service of the new Notice. We usually recommend at least three to five people depending upon the amount of property inside. It is the landlord's responsibility to remove the property.

THE DEPUTY IS THERE ONLY TO MAINTAIN PEACE AND TO PROTECT THE PUBLIC FROM HARMFUL OBJECTS. THIS IS IN REGARDS TO A MOVE OUT TYPE OF EVICTION.

The wise landlord should come prepared with tools (hammer, screwdrivers, etc.) and boxes or bags in which to place loose items. Dangerous household hazardous materials or chemicals will not be placed to the curb and it will be the duty of the landlord to properly dispose of those materials at a designated landfill. Other objects which could be considered dangerous to the public and anything of real value will be confiscated by the deputy and brought back to the office after inventory of the items, i.e., guns, knives, pornographic materials, money, expensive jewelry, unopened alcoholic beverages, prescription medication and paraphernalia, and urns.

IF IT IS A LOCKOUT, AFTER THE LOCKS HAVE BEEN CHANGED, THE TENANTS ARE TO BE GIVEN ACCESS TO THEIR PROPERTY WITHIN A TWENTY-FOUR HOUR PERIOD (REASONABLE TIMES).

While the Virginia Code does not require the landlord to change the locks after completion of the eviction, the landlord may want to consider doing so. There have been several occasions, where after the property has been placed to the public right of way, the tenant has come back and moved everything back in. Once the eviction has been completed, the Sheriff will not come back. If the tenant moved back in, it then becomes a trespass matter which must be taken up with the police department.

Trailer Evictions:

Special considerations are made for trailer evictions.

Trailer Owner is Landlord but not Lot Owner: Where the landlord requesting the eviction is the landlord but not the lot owner, the tenant will be treated as though they were renting an apartment, thus, all personal property inside the trailer will be moved to the nearest public way.

Landlord Evicting is Lot Owner but not Trailer Owner: This is usually the case in delinquent lot rent. In this instance, the Lot Owner/Landlord has the option of either having the trailer removed from the lot and placed in a storage area, or evicting while allowing the trailer to be considered stored on the lot. In

both cases, contents of the trailer are not removed. The utilities are disconnected and the trailer is secured so that no one can enter. The disadvantages to moving the trailer to a storage area are that PERMITS are required and the expense of moving the trailer. The disadvantage of allowing the trailer to remain on the lot is the same as those where the landlords do not change locks. The tenants will sometimes move back in.

For additional information regarding trailer codes see The Virginia Manufactured Home Lot Rental Act. (Sections 55-248.41 et seq. of the Code of Virginia)

TO THE TENANT:

On the day of the scheduled eviction, all property will be placed to the nearest public way or the locks changed. Should the tenant leave any pets, they may be recovered through the city's Animal Control division on Leroy Drive in Virginia Beach or by phone at 427-4158. However, Animal Control will not take any fish and they will be placed to the curb as well. The tenant will be notified by a notice posted on the door of any items confiscated by our department. The tenant may recover those items from the Civil Process division between the hours of 7 a.m. and 5 p.m. Monday through Friday. Identification will be required before release and only the tenant listed on the Writ can pick up the property.

If the tenant cannot be present when the eviction takes place, the tenant may want to have someone whom they trust there to protect their property. The Sheriff can only ensure the safety of the tenant's property while he is there. Once the Sheriff leaves, he is no longer responsible.

In the event there are children home at the time of the eviction without an adult, the Department of Social Services will be called if arrangements cannot be made by the tenant for shelter of the children.

For tenants who are in need of emergency services, such as shelter or financial assistance, they may call the Adult Protective Services, division of the Department of Social Services at 437-3463 or 437-3200.