

The Magistrate Court of Houston County
89 Cohen Walker Drive
Warner Robins, Georgia 31088
Phone (478) 987-4695
Fax (478) 987-5255

DISPOSSESSORY FILING FEES:

**ONE DEFENDANT \$105.00-3 COPIES OF ALL
DOCUMENTS**

**TWO DEFENDANTS \$155.00-5 COPIES OF ALL
DOCUMENTS**

**THREE DEFENDANTS \$205.00-7 COPIES OF ALL
DOCUMENTS**

Final Writ \$27.00

**THE COURT DOES NOT ACCEPT PERSONAL CHECKS,
DEBIT OR CREDIT CARDS.**

Please Note:

**PLAINTIFF MUST PROVIDE COPIES OF THE LEASE OR
NOTE, PAYMENT LEDGER, AND ALL OTHER
SUPPORTING DOCUMENTS.**

**** THE COURT NO LONGER PROVIDES COPIES OF
SUPPORTING DOCUMENTS YOU WISH TO ATTACH TO
YOUR PLEADINGS. ****

MILITARY AFFIDAVITS ARE REQUIRED ON ALL DEFENDANTS

PLEASE COME PREPARED.

IN THE MAGISTRATE COURT OF HOUSTON COUNTY, GEORGIA

Case No. _____ Date Filed: _____

PLAINTIFF (S) (Name and Address)

VS. DEFENDANT (S) (Name and Address)

AFFIDAVIT FOR DISPOSSESSORY WARRANT

Personally appeared, _____, affiant, who on oath says:

- 1. That Plaintiff herein, is the owner of premises situated and known as: Apt./St. No. _____ (Complex/St.) _____ (City) _____, Houston County, Georgia; and affiant is () the Plaintiff () Plaintiff's attorney-at-law () Plaintiff's attorney in fact () Plaintiff's agent.
2. That Defendant(s) herein, is/are in possession, as tenants, of the subject premises, indicated above.
3. That Defendant's tenancy was () at will () at sufferance () under a written agreement.
4. That () tenant fails to pay rent now due thereon; () tenant is holding said premises over and beyond the term for which the same were rented or leased to him; () the term has been terminated by the Plaintiff, with notice to tenants, for the reason that
5. That Plaintiff desires possession of said premises; and, after expiration, termination of default. Plaintiff has demanded possession of said premises and the same has been refused by said defendant(s); and, this affidavit is made that a warrant may issue for the removal of said defendant(s) together with is property from said premises.
6. That attorney's fees are provided for in said lease, and pursuant to O.C.G.A 13-1-11, Plaintiff has advised Defendant of Plaintiff's intention to enforce this provision. Yes, ___ No, ___

WHEREFORE, Plaintiff demands:

(a) Possession of the premises; (b) past due rent of \$ _____; (c) rent accruing up to the date of judgment or vacancy at the rate of \$ _____ per day as computed from _____; (d) accrued interest at the rate of _____ % from _____; (e) attorney's fees in the amount of \$ _____ and, (f) \$ _____ court cost.

Sworn to and subscribed before me This _____ day of _____, 20_____

Filed in office This _____ day of _____, 20_____ AFFIANT

(DEPUTY) Clerk, Magistrate Court of Houston County or Notary Public

(DEPUTY) Clerk

NOTICE AND SUMMONS

TO THE ABOVE-NAMED DEFENDANT(S): _____ You are hereby commanded and required, either personally or by attorney, to appear and present an answer to the affidavit, on the reverse side hereof, during the regular business hours, Monday through Friday, at the Magistrate Court of Houston County, 89 Cohen Walker Drive, Warner Robins (31088), on or before the SEVENTH (7th) day from the date of service of this summons upon you (or on the first business day thereafter IF the seventh day falls on a Saturday, Sunday, or Legal Holiday) Your answer may be given either orally or in writing; and may contain any legal or equitable defenses or counterclaim against the plaintiff. The SEVENTH (7th) day after the date of service of this summons is the last possible date for your answer. If you fail to answer as required, a Write of Possession and judgment for the amount claimed due by plaintiff will be granted without further notice to you.

WITNESS THE HONORABLE JUDGES, MAGISTRATE COURT OF HOUSTON COUNTY, GEORGIA

This _____ day of _____, 20_____ (DEPUTY) Clerk of Court

Application for Dispossessory Warrant

1. **Plaintiff (Landlord)** _____

2. Legal name of titleholder of premises (if different from #1) _____

3. Applicant _____

4. **Leased Premises:**

_____ Street Address

_____ City State Zip Phone # for Defendants

5. **Name of Defendant(s) / Tenants(s)**

1. _____ 2. _____

3. _____ 4. _____

6. **Mailing address for Plaintiff**

_____ Street Address

_____ City State Zip Phone # for Plaintiff

7. Type of Tenancy: Written Lease _____ At Will (Verbal) _____ At Sufferance _____

8. Reason for Eviction: () Failure to Pay Rent () Term Expired () Breach of Lease () Other
(Explain Here) _____

9. Has Landlord demanded possession after breach of termination? Yes No
How? Written Verbal

10. If tenancy at Will was tenant given 60 days' notice to vacate? Yes No
How? Written Verbal

11. If written agreement, does it provide both parties may collect attorney fees? Yes No
If yes, has notice been sent of intention to enforce attorney fee provision? Yes No
If yes, what is the measure of attorney fees? \$ _____

12. Amount of rent per month \$ _____

13. Total Amount of rent now due \$ _____

14. Total late charge past due: \$ _____
Total amount due (RENT + LATE FEES, and other fees including Utilities) \$ _____

(Do not calculate court cost, it will be automatically added to your total)

15. Has Plaintiff filed a dispossessory against this Defendant in the past 12 months? Yes No 16.
What type of service do you want? Personal _____ Tack _____

Note: If a case is tacked and no answer is filed, possession only will be issued in a Default Judgment. If a case is tacked and an answer is filed, a court date will be given and a possible money judgment may be issued.

I herby acknowledge I have been informed of the following sections of the Code Ordinances of Houston County, Georgia.

Sec. 50-25. Disposal of personal property after the issuance of a writ of possession.

Upon the issuance of a writ of possession pursuant to O.C.G.A. 44-7-55©, the owner of the premises subject to the writ shall cause any personal property of the tenant removed from the premises to be placed in a container for pick up. The owner shall not violate any other provisions of the Code as to the location of the container.

If the owner does not have a utility account at the premises subject to the writ with the county utility department, it shall be the responsibility of the owner to transport or have transported to the county landfill or some other permitted landfill any personal property containerized after the execution of the writ, within seven day being put out for pick up.

The county of its agent will not transport any items it would not transport pursuant to other provisions of the Code, including, but not limited to, construction and demolition materials. (Amd. Of 10-20-09, Amd. of 9-7-10)

Sec 1-11. General penalty; continuing violations.

(a) Whenever in this Code or in any other ordinance of the county any act is prohibited or is made or declare to be unlawful or an offense, or the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided thereof, the violation of such provision shall be punishable for the first two offenses by the imposition of a fine not to exceed \$1,000.00, and for the third offense by the imposition of a fine not to exceed \$1,000.00, imprisonment, or up to the limits of any penalty provided by state law for the ordinance.

(b) Each day any violation of this Code or other ordinance shall continue shall constitute a separate offense.

(Amend. Of 10-6-09)

This _____ day of _____, 201

Petitioner

IN THE MAGISTRATE COURT OF HOUSTON COUNTY
STATE OF GEORGIA

Plaintiff,

v.

CIVIL ACTION FILE NO. _____

Defendant,

MILITARY AFFIDAVIT

The undersigned, after first being duly sworn, states the following:

1.

I am of age, of sound mind, and legally authorized to sign this affidavit on behalf of the Plaintiff.

2.

This affidavit is executed pursuant to the Service Members Civil Relief Act, 50 U.S.C. App. 521. Affiant further acknowledges any false statement made in this affidavit may subject the affiant to imprisonment not to exceed one year and a fine.

3.

Affiant states the Defendant, _____ () is, () is not, or () unable to determine, a member of the military forces of the United States.

4.

Affiant is personally knowledgeable of the facts contained in this affidavit and affirms the information contained herein is true and correct.

This _____ day of _____, 201 .

Signature

Printed name: _____

Title: _____

Sworn to and subscribed before me

this _____ day of _____, 201

NOTARY PUBLIC

www.dmdc.osd.mil/appj/scra

THE MAGISTRATE COURT OF HOUSTON COUNTY

89 Cohen Walker Dr.
Warner Robins, Georgia 31088
Phone 478/987-4695
Fax 478/987-5255

Robert E. Turner
Chief Magistrate

Angela W. Sammons
Magistrate

INSTRUCTIONS FOR FILING A DISPOSSESSORY CASE IN THE MAGISTRATE COURT OF HOUSTON COUNTY

Welcome to the Magistrate Court of Houston County. The information contained herein is intended to provide you with general knowledge of the process for filing a dispossession case in the Magistrate Court. It is not a complete disclosure of all legal action available to you. Therefore, you should carefully research your options and understand the consequences of any action you undertake. **The clerks are available to assist you. However, they cannot advise you how to handle your case, nor are they authorized to offer legal advice. If you are unsure how to proceed with your case, please seek counsel from an attorney.**

Definitions:

1. Tenancy at Will: Any rental agreement with no set date of termination.
2. Tenancy at Sufferance: Arises when one comes into possession of land by lawful right, whether as a tenant or otherwise, but wrongfully remains in possession of the property.
When a bank forecloses, the prior owner who remains on the property may become a tenant at sufferance.
3. Leasehold Tenant: Is a tenant who has a written lease with all of the necessary terms of a lease in the contract.
4. Tenant Holding Over: Is a tenant who holds possession of property beyond the term for which the premises were leased.

General Provisions:

There are three common grounds for dispossession of a tenant

1. The tenant's failure to pay rent when due
2. The tenant's holding over beyond the term of the lease or rental agreement; or
3. The landowner desires return of the property being held by a tenant at will or at sufferance.

PROCEDURES FOR A DISPOSSESSORY PROCEEDING

1. The property which is the subject of the dispossessory proceeding must be located in Houston County, Georgia. There is no limitation to the amount of money that can be sought in a dispossessory action filed in the Magistrate Court.

2. Prior to filing a dispossessory, the landlord must make demand for possession of the premises. This demand may be delivered orally or in writing. The demand must be made after the tenant defaults on the terms of the lease, but before the landlord files the dispossessory action.

3. The Magistrate Court provides forms for dispossessory proceedings, including an application and an Affidavit for Writ of Possession. It is the responsibility of the landlord to provide properly complete the affidavit. After the affidavit is prepared, the applicant must swear to the truthfulness of the information contained in the affidavit. If the landlord is seeking past due rent, copies of the lease and the payment ledger should also be attached to the original affidavit and the Defendant's service copy. All court costs must be paid when the affidavit is filed.

4. When the affidavit is filed with the Court, the Clerk will issue a summons that is served on the Defendant by the Sheriff's Office. The summons requires the tenant to file an answer to the affidavit within seven days of the service date. However, if the seventh day is a Saturday, Sunday, or legal holiday, the answer may be filed on the next day the Court is open. Service of the summons and affidavit can be made by personal service, notorious service, or tack and mail service.

5. If a Defendant is served with the Plaintiff's summons and affidavit and fails to file an answer, a Writ of Possession may be issued. When a Defendant is personally or notoriously served, a money judgment may be included in the Writ of Possession. However if the Plaintiff does not attach a lease and a payment ledger to the affidavit, the case will be scheduled for Court. When service is provided by tack and mail and the Defendant fails to answer, the Court can only issue a Writ of Possession. The Court cannot consider the issue of money damages when the case is in default and the Defendant receives tack and mail service. **Furthermore if a Defendant is in default and a Military Affidavit has not been filed with the Court, the case will be scheduled for hearing.**

6. If the Defendant files an answer to the Plaintiff's affidavit, a trial will be scheduled. Money damages may be considered by the Court if the Defendant is personally

or notoriously served or if the Defendant files an answer to the Plaintiff's affidavit. Trials held in dispossessory cases are conducted in the same manner as trials in civil cases.

7. Answers filed by Defendants should be filed with one of the Clerk's of the Court. Answers may raise any alleged defense and include a counterclaim against the landlord. Answers can be made in writing or orally. Any oral answer filed must be made in person. At trial, the Plaintiff must prove all allegations contained in his affidavit. If the Plaintiff is seeking unpaid rent, he must prove how he arrived at the amount of rent requested. If the Defendant disagrees with the amount of rent claimed by the Plaintiff, he needs to present evidence contradicting the Plaintiff's claims. After all evidence is presented, the Court will determine who is entitled to possession of the property and if money damages are due. A written order will be issued and mailed to all parties.

8. All claims arising from the landlord-tenant relationship should be asserted in one case. A party is barred from presenting a claim or counterclaim arising from the same transaction in a piecemeal manner. If a party elects to divide a claim into separated actions, he risks having entry of judgment in the first case operating as a bar to recovery in any subsequent cases.

9. If the tenant appeals the Court's decision, he may remain in possession of the property if he continues to pay rent in an amount determined by law, into the registry of the Court. Appeals of dispossessory actions for possession of the property must be filed within seven days of the date of judgment. If the Defendant is appealing the money judgment and not possession of the property, the appeal must be filed with the Court within 30 days of the Court order. Appeals are heard in the State Court or Superior Court.