

**TEMPORARY WRITS OF RESTITUTION
LANDLORD INSTRUCTIONS
(Forms #13 through #17)**

WHAT IS INCLUDED IN THIS PACKET?

Included in this group of forms is the following:

- Form #13 Application for a Temporary Writ of Restitution
- Form #14 Affidavit/Declaration in Support of Plaintiff's Application for a
Temporary Writ of Restitution
- Form #15 Ex Parte Order to Show Cause Why a Temporary Writ of
Restitution Should Not Issue
- Form #16 Order Upon Landlord's Application for a Temporary Writ of
Restitution
- Form #17 Temporary Writ of Restitution

WHAT IS THE PURPOSE OF THIS SET OF FORMS?

These forms may be used to request that the court issue a Temporary Writ of Restitution. Be aware that if the court agrees that a Temporary Writ should issue, you will have to post a bond before the Temporary Writ will be issued. For more details concerning the bond see the section below entitled "What Happens at the Hearing?".

These forms are not a request for a hearing on the merits of a Permanent Writ of Restitution. It is an interim step in the eviction process. If the court orders a Temporary Writ of Restitution and you, the landlord, ultimately lose at trial, the Tenant/Defendant will be allowed back onto the property.

HOW AND WHEN CAN YOU USE THESE FORMS?

At the time you file your Complaint for Unlawful Detainer, Form #10, you may file an Application for a Temporary Writ of Restitution, Form #13, and the Affidavit/Declaration in Support of Plaintiff's Application for a Temporary Writ of Restitution, Form #14. You do not need to send a copy of this Application to the Tenant/Defendant before submitting it to the Justice of the Peace. Such Application requests the court to issue an Ex Parte Order to Show Cause Why A Temporary Writ of Restitution Should Not Issue, Form #15. If the court grants your request, it will do so by signing the Ex Parte Order to Show Cause Why a Temporary Writ of Restitution Should

Not Issue and indicate the date and time of the hearing. You must serve that signed Order upon the tenant.

HOW DO YOU SERVE THE SIGNED ORDER?

You will need to serve on the Tenant/Defendant such Ex Parte Order to Show Cause Why A Temporary Writ of Restitution Should Not Issue, Form #15, along with the Application for a Temporary Writ of Restitution, Form #13, and the Affidavit/Declaration in Support of Plaintiff's Application for a Temporary Writ of Restitution, Form #14, you used to request the order, on the Tenant/Defendant. The fastest way to do this is to have the Application and Order to Show Cause served on the Tenant/Defendant at the same time the Summons and Complaint are served upon the Tenant/Defendant.

The Complaint must be personally served on the Tenant/Defendant. The rules for service allow anyone over the age of 18, who is not a party to the case, to serve the Complaint on the Tenant/Defendant. A normal way to serve the Tenant/Defendant is to use the sheriff or a private process server. The fee for this service may be different depending on whether it is the process server or the sheriff. However, first you need to fill out a Summons¹ form that the process server can use. You may get a blank Summons from the clerk's office. After filling out the Summons, return it to the clerk who will issue the Summons. There is space on the Summons that allows you to describe what is being served. There is also space that shows when the Complaint was served, usually on the backside of the Summons, that is filled out by the process server and then filed by either the process server or you with the court. Have the process server serve the Order to Show Cause document on the Tenant/Defendant at the same time you serve the Summons and Complaint.

WHAT HAPPENS AT THE HEARING?

At the Show Cause hearing, the court will determine whether there is sufficient justification to issue a Temporary Writ of Restitution. If the court is going to grant your

¹ A "Summons" is the formal court document which the landlord serves upon the tenant in beginning an eviction. It is supplied by the specific court in which the case is filed. The importance is that it sets the time by which the tenant must file an Answer to Complaint for Unlawful Detainer, Form #21. This time will vary with the grounds for the eviction and may be shortened by the court.

request for a Temporary Writ of Restitution, the court will determine the probable loss the Tenant/Defendant will experience if the Temporary Writ is issued. This will allow the court to set a bond that you must post before the court issues the Temporary Writ of Restitution. Such bond is paid to the tenant if you lose at trial.

Be aware that these forms, Application for a Temporary Writ of Restitution, Form #13, the Affidavit/Declaration in Support of Plaintiff's Application for a Temporary Writ of Restitution, Form #14, and draft Ex Parte Order to Show Cause Why a Temporary Writ of Restitution Should Not Issue, Form #15, are unrelated to the process by which you may request the court to shorten time to answer the Complaint. Such request is discussed in the instructions for Form #11, Ex Parte Motion to Shorten Time to Answer.

FILLING OUT FORM # 13

Heading

Fill in the name of the township and county of the Justice Court as set forth on the Complaint for Unlawful Detainer, Form #10.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant as set forth on the Complaint for Unlawful Detainer, Form #10.

Case No. and Dept. No.

Use the identical Case Number and Department Number as was assigned on the Complaint for Unlawful Detainer, Form #10.

Body of the Application

Write in the appropriate word(s) (does or does not) to indicate whether or not you are requesting a hearing based on extraordinary circumstances. The only way you can request a hearing earlier than 11 calendar days after you serve the Summons and Complaint is by claiming there are extraordinary circumstances.

If you wish a hearing prior to the expiration of 11 calendar days after service of Summons and Complaint, you will have to describe the Extraordinary Circumstances that exist in the Affidavit/Declaration, Form #14 (4.b.). The court will not issue a hearing date shorter than the 11 calendar days unless extraordinary circumstances exist.

POINTS AND AUTHORITIES

You do not need to fill out anything here. The reason the Points and Authorities are here is because they explain the law that supports the application.

SIGNATURE SECTION

You must sign, print your name, and put in the date where indicated in the signature block.

CERTIFICATE OF SERVICE

This document requires a "Certificate of Service." The purpose is to prove you notified the other party that you have filed or intend to file the document. The service of this document on the other party may occur before or after actual filing with the court. It is best to serve and file on the same day.

Provide the date and name of the document you delivered to the tenant or the tenant's attorney.

Fill in the address of the tenant or tenant's attorney. If the tenant is represented by an attorney, the Certificate of Service must indicate that the document is being sent to the attorney and indicate the attorney's address. If the tenant is represented by an attorney, you should not send a copy to the tenant.

Check the method by which the document was delivered.

The signature and printed name of the server are required.

FILING OUT FORM #14

Heading

Fill in the name of the township and county of the Justice Court as set forth on the Complaint for Unlawful Detainer, Form #10.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant as set forth on the Complaint for Unlawful Detainer, Form #10.

Case No. and Dept. No.

Use the identical Case Number and Department Number as was assigned on the Complaint for Unlawful Detainer, Form #10.

Body of the Affidavit

Number 1

Print your name.

Number 2

Print your address.

Number 3

State the reasons you are requesting the Temporary Writ of Restitution from this court.

Number 4

Check either A or B depending on whether you are seeking an expedited hearing. An expedited hearing is one that you wish to occur prior to 11 calendar days after service of the Complaint upon Tenant/Defendant. If you are seeking an expedited hearing, then state the extraordinary circumstance that exists to justify such shortened period in subparagraph (B). When you have finished counting the days, you can determine the earliest hearing date you can request unless you claim that there are extraordinary circumstances.

SIGNATURE AND NOTARY PUBLIC / DECLARATION SECTION

You have a choice between signing the document in front of a notary, making the document an affidavit, or signing a declaration without a notary. Generally, clerks are available to certify that you signed the document. However, both alternatives mean that if you are not being truthful, you could be prosecuted for perjury.

CERTIFICATE OF SERVICE

This document requires a "Certificate of Service." The purpose is to prove you notified the other party that you have filed or intend to file the document. The service of this document on the other party may occur before or after actual filing with the court. It is best to serve and file on the same day.

Provide the date and name of the document you delivered to the tenant or the tenant's attorney.

Fill in the address of the tenant or tenant's attorney. If the tenant is represented by an attorney, the Certificate of Service must indicate that the document is being sent

to the attorney and indicate the attorney's address. If the tenant is represented by an attorney, you should not send a copy to the tenant.

Check the method by which the document was delivered.

The signature and printed name of the server are required.

FILLING OUT FORM #15

Heading

Fill in the name of the township and county of the Justice Court as set forth on the Complaint for Unlawful Detainer, Form #10.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant as set forth on the Complaint for Unlawful Detainer, Form #10.

Case No. and Dept. No.

Use the identical Case Number and Department Number as was assigned on the Complaint for Unlawful Detainer, Form #10.

Body of the Proposed Order

Fill in the name of the Tenant/Defendant

Leave the date and time blank so the Justice of the Peace can fill the time and date of the hearing. Give to the clerk for the judge to complete.

CERTIFICATE OF SERVICE

This document requires a "Certificate of Service." The purpose is to prove you notified the other party that you have filed or intend to file the document. The service of this document on the other party may occur before or after actual filing with the court. It is best to serve and file on the same day.

Provide the date and name of the document you delivered to the tenant or the tenant's attorney.

Fill in the address of the tenant or tenant's attorney. If the tenant is represented by an attorney, the Certificate of Service must indicate that the document is being sent to the attorney and indicate the attorney's address. If the tenant is represented by an attorney, you should not send a copy to the tenant.

Check the method by which the document was delivered.

The signature and printed name of the server are required.

FILLING OUT FORM #16

You may fill this out and hand it to the judge at the time of the Show Cause hearing. This is the form the judge may use to state whether the court is granting or denying your Application for a Temporary Writ of Restitution, Form #13.

Heading

Fill in the name of the township and county of the Justice Court as set forth on the Complaint for Unlawful Detainer, Form #10.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant as set forth on the Complaint for Unlawful Detainer, Form #10.

Case No. and Dept. No.

Use the identical Case Number and Department Number as was assigned on the Complaint for Unlawful Detainer, Form #10.

Body

Leave blank. The court will determine whether or not your Application for a Temporary Writ of Restitution is granted or denied. The court will also fill in the amount of the bond you will have to pay before the court will issue the Temporary Writ of Restitution itself.

FILLING OUT FORM #17

You may submit this along with the Order Upon Landlord's Application for a Temporary Writ of Restitution, Form #16, at the time of the hearing. If the court grants the Order, the court will hold the Temporary Writ of Restitution until you file the bond indicated in the Order with the court clerk.

Heading

Fill in the name of the township and county of the Justice Court as set forth on the Complaint for Unlawful Detainer, Form #10.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant as set forth on the Complaint for Unlawful Detainer, Form #10.

Case No. and Dept. No.

Use the identical Case Number and Department Number as was assigned on the Complaint for Unlawful Detainer, Form #10.

Body of the Temporary Writ

Leave blank; the court will complete this portion.