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## FREQUENTLY ASKED QUESTIONS MISSOURI EVICTION LAWSUITS

### **Q. What is an eviction?**

An “eviction” is the removal of tenant(s) from a rental property by a landlord through a court action (lawsuit). There are three types of evictions in Missouri: (1) a Rent & Possession action, (2) an Unlawful Detainer action, and (3) an Emergency Eviction.

### **Q. What is a Rent and Possession action?**

If your tenant(s) is past due on rent and still residing in your property, an attorney at Anderson & Associates will file a “Rent and Possession” lawsuit to evict.

### **Q. What is an Unlawful Detainer action?**

If your tenant(s) has (1) violated their lease, (2) violated the law, or (3) failed to move when their lease expired, an attorney at Anderson & Associates will file an “Unlawful Detainer” lawsuit to evict, after proper notice has been served upon the tenant(s).

### **Q. What is an Emergency Eviction?**

In Missouri, an “Emergency Eviction” lawsuit is often called an immediate eviction. This is the only type of procedure where the landlord is permitted to evict a tenant(s) 24 hours after a judgment is entered by a Judge and without a Deputy Sheriff present. The expedited process requires the filing of a lawsuit and the entry of a judgment. The landlord must prove violence, drug-related criminal activity, or physical damage to the premises exceeding an amount equal to or greater than 12 months of rent.

### **Q. What information do you need before you will help evict a tenant?**

Please complete the Landlord Information Form attached. If you do not know the name of the people living in your property, please list them as John Doe or Jane Doe.

### **Q. Who is John Doe and Jane Doe?**

The names “John Doe” refers to men and “Jane Doe” to women; they are used as placeholder names for a party to a lawsuit whose true identity is unknown.

### **Q. How much does it cost to file an eviction suit?**

Prior to filing a lawsuit, Anderson & Associates will invoice you for the Court’s filing fee, a \$45.00 private process server fee, \$250.00 attorney’s fee, a \$10.00 per adult tenant Sheriff Surcharge, and a sheriff’s fee for the lockout. Please refer to the Fee Schedule.

### **Q. Why do I need a lawyer to file an eviction suit?**

If your rental property is owned in the name of a business entity, you are required by law to be represented by a lawyer. If you own your rental property in your individual name, you may be able to file a lawsuit without a lawyer. In Missouri, an eviction lawsuit takes much less time than a regular civil case. But in

exchange for expedited treatment, landlords must follow highly detailed rules. In addition, because a person's home is at stake, many Judges will set the bar very high when it comes to ruling in the landlord's favor. Landlords are fundamentally no different than any other type of business owner – they aim to make their businesses profitable while avoiding liability. Hiring Anderson & Associates to help you achieve these goals is a smart business move.

**Q. Can I change the locks or turn off the utilities when the tenant stops paying?**

No. Missouri law forbids “self-help” evictions and imposes penalties for landlords who break the law. Landlords may be prosecuted criminally and/or sued in civil court for the tenant's damages (such as costs of temporary housing, the value of food that spoiled when the refrigerator stopped running, or an electric heater when the gas was shut off) in addition to hefty penalties. The fact that the tenant(s) did not pay rent, left the property a mess, verbally abused you or your staff, or otherwise acted outrageously will not be a valid defense if you do not follow the law.

**Q. What is an unlawful eviction?**

An “unlawful eviction” is any attempt by a landlord to evict a tenant(s) without a court judgment. Only a Judge can order a tenant(s) to move. “Self-help” evictions include changing a tenant's locks, threatening or engaging in physical violence to strong-arm a tenant(s) into vacating, turning off utilities, or removing a tenant's personal property from the rental unit.

**Q. Can I turn off the utilities if the tenant refuses to place them in her name?**

It is illegal to call the electric, water, gas or oil companies and cancel service to the property regardless of what your lease provides. Even if the utilities are in your name, it is still illegal to shut off “essential” utility service to the property while a tenant(s) is living there. The bottom line is that if you force your tenant(s) to vacate without due process (a lawsuit), you can be fined more than it would have cost you to go through the proper process. The landlord never wins!

**Q. How long does the eviction process take?**

A court date will be scheduled approximately four (4) weeks after the lawsuit is filed. Our private process server will give a copy of your petition and the court summons to the tenant(s) at least ten (10) days before the court date.

- Regardless of the type of lawsuit, if the tenant(s) appears in Court and disputes the allegations in your petition, the Judge will set the case for trial seven (7) to fourteen (14) days later.
- If the tenant(s) does not appear in Court, the Judge will enter a default judgment. A judgment for “Rent and Possession” becomes final after ten (10) days. A judgment for “Unlawful Detainer” becomes final after thirty (30) days. A judgment for “Immediate Eviction” becomes final after twenty-four (24) hours.
- After a judgment becomes final, the writ of restitution can be issued to the Deputy Sheriff.

The Deputy Sheriff has up to fifteen (15) days in Jackson County, Missouri, and thirty (30) days in Platte County, Clay County and Cass County to physically remove your tenant(s). YOU SHOULD BE AWARE

THAT YOUR TENANT(S) MAY BE ON THE PROPERTY UP TO NINETY (90) DAYS AFTER A CASE IS REFERRED TO OUR LAW OFFICE.

**Q. What is a petition for eviction?**

A “petition” is a formal certified document filed with the Court requesting an order requiring your tenant(s) pay rent and late fees and move out of your property.

**Q. What is a summons?**

A “summons” is the paperwork that tells your tenant(s) that they are being sued and asserts the power of the Court to hear and determine the case. It will also command the tenant(s) to appear before the Court on a specific day and to answer the petition.

**Q. Where will you file my eviction suit?**

The eviction must be filed in the county where the property is located.

**Q. Who should be named as the Landlord in the petition?**

Either the owner or the manager of a house, apartment, condominium, land or real estate may be named as the Landlord in the petition. Out of an abundance of caution, Anderson & Associates prefers to name both the owner and the manager so that either person / entity can testify should a trial become necessary.

**Q. What notice is required prior to filing my Rent & Possession lawsuit?**

Missouri law requires that the landlord make a demand on the tenant(s) requiring them to pay past due rent and fees or vacate the property. Anderson & Associates will send this demand for you as part of their fee.

**Q. What notice is required prior to filing my Unlawful Detainer lawsuit?**

You should serve your tenant(s) with a 10 Day Termination Notice if your tenant(s) has (1) violated their lease, or (2) violated the law, or (3) failed to move when their lease expired.

**Q. What notice is required to terminate a month-to-month tenancy?**

If you do not have an executed lease agreement and your tenant has been paying you periodic rent, you have a month-to-month tenant. A month-to-month tenancy renews every 30 days. This means that if you do not do anything, your tenant(s) can theoretically stay forever. To terminate a month-to-month tenancy, you must provide the tenant(s) with one month’s notice, calculated from a rent paying date. For example, if rent is due on the 1st day of each month, the Landlord must give notice on July 1st to terminate on July 31st. Anderson & Associates will file your eviction on August 1st. If the Landlord gives notice on July 5th, he cannot terminate until August 31st.

**Q. What is the process for an eviction?**

1<sup>st</sup> Step – Anderson & Associates will send a written demand letter to your tenant(s) requiring her to pay past due rent and fees or vacate the property. The letter will also prompt the tenant(s) to contact you if they want to resolve the lawsuit amicably.

2<sup>nd</sup> Step – Anderson & Associates will file an eviction petition at the courthouse on your behalf.

3<sup>rd</sup> Step – The court clerk will schedule the case for a hearing and issue a summons requiring the tenant(s) to appear in Court.

4<sup>th</sup> Step – A private process server will serve a copy of the petition and summons on the tenant(s).

5<sup>th</sup> Step – Anderson & Associates will appear in Court on your behalf and obtain a judgment.

6<sup>th</sup> Step – Anderson & Associates will contact you with the Court's results and ask you if you want to schedule the Deputy Sheriff to perform a lockout procedure.

7<sup>th</sup> Step – Upon request, Anderson & Associates will file a Writ of Restitution with the Court and request a Deputy Sheriff schedule the lockout.

8<sup>th</sup> Step – Upon request, Anderson & Associates will set up a payment plan with your former tenant(s) to pay the past due rental balance or issue a garnishment to collect the funds due to you.

**Q. After you file the eviction lawsuit, I was told you have to serve the other party. What does that mean?**

Anderson & Associates must notify the tenant(s) that they are being evicted by providing them with a copy of the petition and summons. There are two options for service: (1) personal service or (2) service by posting and mail.

**Personal Service**

Personal service is **required** if you are seeking a monetary (money) judgment for unpaid rent and fees. The petition and summons can be served on the tenant(s), someone over the age of 15 present at the property, or a member of the tenant's family. Personal service must be made at least four (4) days before the court date listed on the summons.

**Service by Posting and Mailing**

If personal service cannot be made, the process server can post the papers on the main door of the property and mail a copy of the petition and summons to the tenant(s). Posting and mailing service must be made at least ten (10) days before the court date listed on the summons. With this type of service, the Court will only be able to award you possession of the property and cannot award you a judgment for rent, late fees, utilities or any money damages.

**Q. Why can't I serve the paperwork on the tenant?**

A party to a lawsuit cannot serve papers in their own case. Most Courts require a registered private process server or a Deputy Sheriff to serve papers. Anderson & Associates uses private process servers at Sentinel Private Investigations. The fee for their service is \$45.00 per address.

**Q. Do I need to appear at the court date?**

You do not need to appear at the first court date. An attorney at Anderson & Associates will appear on your behalf and request the Judge enter a judgment in your favor.

**Q. What is a judgment?**

A “judgment” is a written decision by a Judge regarding the rights and liabilities of the parties in a lawsuit. A judgment also generally provides the Court’s explanation of why it has chosen to make a particular decision.

**Q. What is a default judgment?**

A “default judgment” is a binding judgment, issued by a Judge, based on your tenant(s)’ failure to appear in Court on the date listed on the summons after they have been served.

**Q. What is a consent judgment?**

A “consent judgment” is a binding judgment, issued by a judge, based on an agreement between you and your tenant(s) which settles the case.

**Q. What is a stay of execution?**

A “stay of execution” is a court order to temporarily suspend the eviction date. A stay can be granted in two ways (1) automatically by the operation of law or (2) conventionally, when you and your tenant(s) agree to a repayment plan or to conduct the eviction on a certain date or time.

**Q. What happens if the tenant appears in Court and disputes the petition?**

If your tenant(s) appears at the first court date and disputes the claims made in the petition, the Judge will schedule the case for a trial. An attorney at Anderson & Associates will request the first available trial setting on your behalf.

**Q. What do you need from me if my case is scheduled for a trial?**

After the first court date, the docket clerk at Anderson & Associates will inform you of the trial date and location. She will also request you provide her with the following information at least two (2) days prior to the trial date:

1. The name and phone number of the witness who will appear on the landlord’s behalf;
2. A copy of the Lease or a statement that one does not exist;
3. An updated payment ledger that matches the amounts you are requesting;
4. A copy of your welcome letter (only applicable if you recently purchased the property);
5. The tenant(s) rental file.

\* You MUST provide copies of these documents to an attorney at Anderson & Associates no later than two (2) days prior to your trial. It is very important that we are prepared for the trial.

**Q. Do I have to appear at the trial?**

You or someone appointed by your business on your behalf will need to appear at the trial.

**Q. What happens in a trial?**

In an eviction trial, a Judge will examine the evidence to decide whether it is more likely than not that the allegations in the petition are true and the tenant(s) should be evicted. An attorney at Anderson & Associates will have the opportunity to argue your case first. Then the tenant(s) will be able to ask you questions, refute your evidence, and offer their own evidence.

**Q. Why did an attorney at Anderson & Associates give my tenant a “stay of execution” without talking to me first?**

Any judgment, other than a default judgment, becomes final after thirty (30) days. If an attorney at Anderson & Associates can negotiate for your tenant(s) to voluntarily move out on a date sooner than thirty (30) days from the court date, we will do so without your permission. We are always looking for ways to expedite the eviction process! Under no circumstances will an attorney provide a tenant(s) with a stay of execution for more than thirty (30) days after the court date without your approval.

**Q. The tenant was ordered to leave by the Judge, but they are still there. What can I do?**

If the tenant(s) do not leave after a judgment is entered against them, Anderson & Associates will file a writ of restitution with the Court on your behalf.

**Q. What is a Writ of Restitution?**

A “writ of restitution” is a court order issued by a Judge requiring a Deputy Sheriff to physically remove the tenant(s) from the rental property.

**Q. How will I know when the eviction is scheduled?**

Your eviction will be assigned to a Deputy Sheriff within seven (7) to ten (10) days after a writ of restitution is filed. The Deputy Sheriff will call you at the telephone number Anderson & Associates has on file for you, to inform you of the date and time of the lockout.

**Q. Do I need to be present at the eviction?**

Yes. On the day of the eviction, you must be available to “greet” the Deputy Sheriff. The Deputy will usually pull up to the location of the eviction in a marked patrol car. Typically, the Deputy will not leave the car. It is up to you to go to the car and identify yourself as the landlord or landlord’s representative. You will then need to identify the entry door to the rental property and will sign a document authorizing the Deputy to use force to enter if necessary. Generally, you either need to have a key to the rental property so that the Deputy can enter or have a locksmith available to provide access.

**Q. What happens if the tenant refuses to remove themselves and their belongings?**

The Deputy Sheriff will physically remove the tenant(s) from the rental property. You will be responsible for moving all of the tenant's personal property to the curb. Please be respectful of the Deputy's time and have a sufficient amount of help available to move the tenant's personal property quickly to the curb. Before leaving, the Deputy will authorize you to change the locks to the rental property so the tenant(s) cannot return.

**Q. Do I really have to set everything on the curb or can I keep it and sell it?**

The Deputy Sheriff will instruct you to remove the tenant's personal property to the curb. That is the end of your responsibility. Once the belongings are on the curb, they are considered abandoned property and you may do with it what you wish.

**Q. What should I do if the tenant moves out but leaves her personal belongings behind?**

You can declare a rental property abandoned and remove a tenant's belongings without a court judgment if (1) you have a reasonable belief the tenant(s) has vacated and does not intend to return, (2) rent is due and has been unpaid for 30 days, and (3) you post and mail (via regular mail AND certified mail) to the tenant's last known address a written notice providing the tenant(s) 10 days to contact you in writing and state that the property is not abandoned. The demand letter must be mailed by both first class mail and certified mail, return receipt requested. You must follow the statutory procedure in RSMo 441.065 EXACTLY in order to be protected.

**Q. How do I collect on my judgment?**

If Anderson & Associates has obtained a money judgment on your behalf, the docket clerk will email or call you to ask if you want us to collect the money on your behalf. You will be directed to talk with the collection department at 816-931-2207 or email us at [collect@mokslaw.com](mailto:collect@mokslaw.com).