

DISPOSSESSORY QUESTIONS

Can I mail the dispossessory complaint to the court? (MAG 30)

Yes. However, the complaint should be sworn to and signed before a Notary Public.

How much does it cost to file a dispossessory action? (MAG 30)

The filing fee for dispossessory proceeding in the Magistrate Court of Walton County is **\$101.00**. Checks, cashier's checks or money orders should be made payable to the Clerk Of Magistrate Court.

The tenant failed to file an answer within 7 days from service of the summons, so what can I do? (MAG 30)

When the tenant fails to file an answer within 7 days of service of the summons, the landlord may contact the magistrate court's office about presenting the writ of possession to a judge for signature.

What are the requirements for a landlord filing a dispossessory action? (MAG 30)

The relationship between the parties must be landlord and tenant. The tenant must be either a tenant holding over, a tenant at will, a tenant at sufferance, or not paying rent as it becomes due. The landlord must have made a demand for possession of the premises prior to commencement of the proceedings.

I (tenant) missed the time to file an answer, can I file a late answer? (MAG 30)

While you may file a late answer, it will not prevent a landlord from contacting the magistrate court's office about presenting the dispossessory proceeding to a judge to issue a writ of possession.

Can I (the tenant) appeal my case if I lose? (MAG 30)

Yes, to appeal your case you must file a Notice of Appeal with the Clerk of Magistrate Court within seven (7) days of the entry of judgment by the Court. In order to appeal, the Tenant may be required to deposit the past due rent awarded and all future rent accrued into the registry of the court **to maintain possession of the property during the appeal**. You must send a copy of the appeal to the other party. If your case is appealed, it will be transferred to the Superior Court of Walton County. The case will be assigned a new case number and will be scheduled for a hearing. You will receive notice from the Superior Court as to when your hearing will be held dependent upon to which court the case was appealed.

Can I answer, appear in Court and/or consent to a Judgment on behalf of my spouse?

If a husband and wife are both served with a dispossessory action, both the husband and the wife need to sign and file an answer. They can file a consolidated answer, providing that both sign the answer. Failure to sign and file an answer can result in a default judgment against the spouse failing to file and/or sign. A spouse may not enter an appearance on

behalf of their spouse in Court. Failure to appear and proceed in court can result in a default judgment against the party not appearing in Court. A spouse can not consent to a Judgment being entered against their spouse.

Where do I file a dispossessory action to evict my tenants? (MAG 30)

A dispossessory action should be filed in the county where the property is located.

My landlord has failed to make repairs to the premises, so what can I do? (MAG 30)

After the tenant has given reasonable notice of a defect to the landlord, and the landlord has failed to make the repair within a reasonable time, the tenant may make reasonable repairs and deduct the reasonable cost from the rent, or the tenant may file a lawsuit against the landlord for damages arising from the failure to repair. If the landlord has filed suit against the tenant, the tenant may seek recoupment for any diminution in value of the leasehold caused by the landlord's failure to repair.

Can I use self help to evict the tenant from the rental property without the commencement of a dispossessory action? (MAG 30)

No. A landlord may legally remove a tenant and the tenant's property from rented premises only under the dispossessory procedure. If a landlord uses self-help to evict a tenant without a dispossessory it is a tort for which the tenant may recover damages in a civil action, and a landlord who cuts off utilities may be subject to misdemeanor prosecution under **OCGA 44-7-14.1**.

Does it matter what type of service of the summons and dispossessory action is had on the tenant? (MAG 30)

Yes, and No. If the only relief sought by the landlord is possession of the premises, then personal, sui juris, and tack and mail service is sufficient. If the landlord is seeking possession of the premises and a money judgment against the tenant, then you must have personal or sui juris service on the tenant. If the landlord seeks to have a money judgment and possession of the premises, the landlord should note on the return of service "personal or sui juris service," to notify the sheriff's department as to the type of service sought.

How does the tenant know that he or she is being sued? (MAG 30)

You must have the Tenant(s) served with a copy of the Dispossessory Action.

How is the summons and dispossessory action served on the tenant? (MAG 30)

Personal service on the tenant of the dispossessory proceeding and summons must be attempted. In the event the sheriff cannot serve the tenant personally, the sheriff may serve the dispossessory proceeding, **sui juris**, i.e. to any person residing at the premises of suitable age and discretion. If the sheriff is unable to obtain **personal** or **sui juris**

service of the dispossessory proceeding on the tenant, the summons and dispossessory proceeding may be had by **tack and mail**, i.e. posted on the door of the premises, and on the same day of posting, the sheriff's office must mail a copy of the dispossessory proceeding to the tenant at the tenant's last known address.

What items may be included in a dispossessory complaint? (MAG 30)

The complaint may include a demand for possession of the premises, past due rents, utilities, late fees, attorneys' fees, and other damages related to the landlord-tenant relationship.

Can I include a claim for damages done to the premises during the term of the lease? (MAG 30)

You may file a claim for damages done to the premises during the term of the lease. However, if the tenant is still in possession of the premises at the time of the dispossessory hearing, you may not recover a judgment for damages done to the premises at the dispossessory hearing, because the extent of the damages and cost of repairs can not always be accurately ascertained until the tenant has vacated the premises. As a general rule, another civil action is required to obtain a judgment for any damages done to the premises.

The tenant has filed his or her answer, so when will the hearing be held? (MAG 30)

After an answer is filed in a dispossessory action, the court schedules the hearing for the next available dispossessory calendar. Court dates and times are available with the Clerk of the Court.

I have been served with a summons for a dispossessory action, what can I do? (MAG 30)

Upon service of a summons of a dispossessory action, the tenant has seven days to file an answer in the magistrate court clerk's office. Failure to file the answer within seven days of service of the summons, may result in a writ of possession being issued against the tenant.

What about my security deposit? (MAG 30)

"Issues involving the security deposit are post dispossessory issues and are not ripe for adjudication in a dispossessory action."

If the landlord is a corporation or limited partnership, or a person whose family owns 11 or more rental units, or a person that employs a paid property manager, then the landlord must either post and maintain an effective surety bond with the clerk of the superior court in the county in which the rental unit is located, or deposit all security deposits in an escrow account established solely for that purpose and notify the tenant in writing of the location of the account. Before receiving any security deposit from the tenant, the landlord must deliver a list to the tenant of existing damage to the premises. The tenant has a right to retain this list. The tenant has the right to inspect the premises to determine the accuracy of the list before taking occupancy. The signing of the lease by both parties is

conclusive evidence of the accuracy of the list but is not conclusive as to latent defects. If the tenant has any objection to the list, the objections must be in writing and signed by the tenant. Within three business days after the termination of occupancy by the tenant, the landlord or his/her agent shall inspect the premises and prepare a list of any existing damages. The list shall contain the estimated dollar value of such damage, which is applied against the security deposit. If the tenant vacates the premises without notice to the landlord, the landlord may make the final inspection within a reasonable time. The landlord should return the security deposit in full within one month after termination of the tenant's occupancy. In the event that the landlord retains any portion of the security deposit for cause, the landlord must deliver to the tenant a list specifying the exact reasons for the withholding as well as any remainder of the security deposit. The list and remainder of the security deposit may be delivered by mail to the tenant's last known address. The landlord may hold the security deposit for past due rent without notice to the tenant.

The landlord actually owes me money, so what can I do? (MAG 30)

Along with your Answer, you can file what is called a Counterclaim, which is, essentially, a Statement of Claim filed by the Tenant against the Landlord. (See the information on Statements of Claim, above.) If your Counterclaim exceeds the jurisdictional limits of the Magistrate Court, the case will be transferred to a court that does have jurisdiction. Usually the entire case will be transferred. However, there may be some cases where the Landlord's claim will remain in Magistrate Court and the Tenant's counterclaim will be transferred separately.

Can I present the court with estimates of repair? (MAG 10)

In most cases the Court will allow the limited use of repair estimates. However, this exception is limited to use of the repair estimates to establish the basis of your opinion as to what it will cost to repair the damage to the property. Any other information contained in the estimate, such as an opinion as to the cause of the damage, must be presented through the testimony of the person who formed that opinion, usually the person who prepared the estimate.

How are (landlord and property) cases presented in court? (MAG 30-500)

Because the Landlord has filed the case and carries the burden of proof, he or she gets to present evidence first. The Landlord will call all of his or her witnesses first. After a witness testifies, the other party has an opportunity to cross examine that witness. When all of the Plaintiff's witnesses have testified and been cross examined, the Tenant calls his or her witnesses, who may also be cross examined by the Landlord.

How much evidence will I need in order to win my (landlord and property) case? (MAG 30-501)

There is no specific amount of evidence required from either party. The Landlord has the burden of proving his or her case. The Tenant has the burden of proof on any counterclaim. The party with the burden of proof must establish his or her case by what is known as a preponderance of the evidence. That basically means that the evidence produced by that party must be more persuasive than the evidence produced by the other

party. If, after hearing all of the evidence, the Court is not persuaded that one party or the other should prevail, the case will be decided against the party which had the burden of proof.

Do I have to do anything after my judgment is paid? (MAG 30-502)

If you are awarded a money judgment and the other side satisfies or pays that judgment, you must file a Satisfaction of Judgment with the Court. A judgment will appear on and damage a person's credit report until it is satisfied. You could be liable for damages to that person if you allow the judgment to continue to appear after it has been paid.

The law requires a judgment creditor to file a "Satisfaction of Judgment" with the clerk of court upon receiving payment in full on an outstanding civil judgment. The judgment creditor is the one who is awarded money to be paid by the losing party. This may be the plaintiff or the defendant on a counterclaim. The failure of the judgment creditor to properly have a civil judgment marked as being satisfied may subject the judgment creditor, the attorney for the judgment creditor, or both, to penalties up to **\$500.00**. This form should be filed with our clerk when judgment are paid in full.

Duties of Judgment Creditor: Upon payment of the entire debt upon which a judgment or FiFa has been issued, the judgment creditor shall timely (within 60 days) direct the clerk(s) of the appropriate court(s) in writing to: (1) cancel the writ of FiFa, if a writ was issued; (2) mark the judgment satisfied. The failure to timely comply may subject the judgment creditor to monetary damages, O.C.G.A. B' 9-13-80. The Writ of Fi.Fa. should be canceled with Clerk of Superior Court in each county where you filed the writ. Also, this form should be submitted to clerk on all judgment and consent judgments upon receipt of full payment.

O.C.G.A. 9-13-80. Execution to be canceled when satisfied; private right of action; damages.

- (a) Upon the satisfaction of the entire debt upon which an execution has been issued, the plaintiff in execution or his or her attorney shall timely direct the clerk to cancel the execution and mark the judgment satisfied.
- A private right of action shall be granted to a judgment debtor upon the failure of such plaintiff or counsel to comply with the provisions of subsection (a) of this Code section.
- Failure to direct cancellation and satisfaction within 60 days after satisfaction of the entire debt shall be prima-facie evidence of untimeliness.
- Recovery may be had by way of motion in the action precipitating the judgment and execution or by separate action in any court of competent jurisdiction.
- Damages shall be presumed in the amount of **\$100.00**. Actual damages may be recovered, but in no event shall recovery exceed **\$500.00**.