

MAGISTRATE COURT OF PEACH COUNTY

**700 Spruce Street, Wing A
Fort Valley, Georgia 31030
(478) 825-2060 Fax: (478) 825-1893**

DISPOSSESSORY FILING FEES:

ONE DEFENDANT \$80.00 – 2 Copies of All
Supporting Documents

TWO DEFENDANTS \$105.00 - 3 Copies of All
Supporting Documents

THREE DEFENDANTS \$130.00 – 4 Copies of All
Supporting Documents

Please Note:

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

****The Court charges .25 cents per page for copies****

**MILITARY AFFIDAVITS ARE REQUIRED ON
ALL DEFENDANTS**

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

IN THE MAGISTRATE COURT OF PEACH COUNTY STATE OF GEORGIA

Plaintiff

v.

Case No.

Defendant

Address

AFFIDAVIT FOR SUMMONS OF DISPOSSESSORY

Personally appeared, who upon oath says that he is owner, or (attorney, agent or lessee) for the owner of said premises, and that Defendant is in possession as tenant of premises at the above address in County.

Further Tenant:

- (a) fails to pay the rent which is now past due.
(b) holds the premises over and beyond the term for which they were rented or leased to him or
(c), and that
(d) plaintiff is entitled to recover any and all rent that may come due until this action is finally concluded.

Plaintiff desires and has demanded possession of the premises and Defendant has filed and refused to deliver said possession.

WHEREFORE, Plaintiff DEMANDS:

- (a) possession of the premises; (b) past due rent of \$; (c) rent accruing up to the date of judgment of vacancy at the rate of \$ per; (d)

Sworn to and subscribed before me, this, 20

Affiant

Clerk/Magistrate

SUMMONS

TO: The Constable of the Magistrate Court or Sheriff or his Deputies of said County,

GREETING:

The defendant(s) herein is/are commanded and required personally or by attorney to answer orally or in writing, to the Judge or Clerk of Magistrate Court, between the hours of and on or before the SEVENTH day from the date of service of the within affidavit and summons (or on the first business day thereafter IF the seventh day falls on Saturday, Sunday or legal Holiday). If the answer is NOT made, a Writ of Possession shall issue instanter and judgment shall be granted as demanded by the Plaintiff named herein.

Witness the Presiding Judge of said Court.

This day of, 20

Clerk/Magistrate

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.

**IN THE MAGISTRATE COURT OF PEACH COUNTY
STATE OF GEORGIA**

Plaintiff

Vs.

Civil Action File No. _____

Defendant

MILITARY AFFIDAVIT

The undersigned, after first being duly sworn, state 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.

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

This _____ day of _____, 20____.

Signature

Printed Name

Title: _____

Sworn to and subscribed before me this
_____ day of _____, 20____.

Notary Public

My Commission Expires: _____

www.dmdc.osd.mil/appj/scra

MAGISTRATE COURT OF PEACH COUNTY

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Fort Valley, Georgia 31030
(478) 825-2060 Fax: (478) 825-1893

Leah H. Morris
Chief Deputy Clerk

LAURENS C. LEE
CHIEF MAGISTRATE

Claudia E. Landeros
Deputy Clerk

Bonnie L. Smith
Deputy Clerk

GREGORY HOMER
MAGISTRATE

Arlaker R. Zanders
Deputy Clerk

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

Welcome to the Magistrate Court of Peach County. The information contained herein is intended to provide you with general knowledge of the process for filing a dispossessory 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 Peach 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 files 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 Superior Court.