

Writ of Possession

12008.1 DEFENDANTS RE-ENTERING REAL PROPERTY FOLLOWING EVICTION

Local law enforcement agencies are frequently confronted with a problem that usually occurs shortly after a Writ of Possession for Real Property has been enforced by Sheriff's Department personnel.

- (a) Attempt to Re-Enter or Re-Occupy after Eviction - Defendants who have been evicted from real properties frequently return and re-enter or re-occupy the premises, in violation of the court order. Landlords are usually directed by the local police agency to contact the Sheriff's Department, and are informed by the local police agency that the eviction process is a civil matter and must be handled exclusively by the Sheriff's Department.
 - 1. The re-entry of a defendant to premises following the enforcement of a Writ of Possession, without the consent of the property owner or landlord, is a criminal violation.
 - 2. These crimes are misdemeanors and are enforceable by the local police agency [1].
 - i. Penal Code 419 Repossession of lands after removal by legal process
 - ii. Penal Code 166 Contempt of Court
 - iii. Penal Code 602(o) Trespass – Refusal to leave private property
 - iv. Penal Code 602(t) Trespass – Refusal to leave private property
 - v. Penal Code 602.5 Unauthorized entry of property
- (b) Plaintiff's Receipt for Possession
 - 1. In addition to the posting of the "Notice of Eviction" on the subject property following a successful eviction, the landlord or plaintiff in the case is provided with a receipt by the Deputy conducting the eviction that is entitled the "Plaintiff's Receipt for Possession".
 - 2. This form is provided to the landlord or agent in order to provide the property owner with written documentation confirming that they have been legally provided with the right to possession of the property.
 - 3. The plaintiff is instructed to present the receipt to the local law enforcement agency along with a copy of the writ or court order that was enforced to obtain possession of the property, should the defendant return to the premises.
 - 4. This form also includes on its face the citation of Penal Code 419 [2], Repossession of land after removal by legal process.
- (c) Recommended Actions
 - 1. When a landlord presents a copy of the "Eviction Restoration Notice" and requests assistance in removing a previously evicted tenant, a peace officers

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should inspect both the "Writ of Possession" and court order and the "Eviction Restoration Notice" carefully.

2. Officers should validate the case number identified in the upper left-hand corner of the receipt and compare it to the attached copy of the court order or Writ of Possession.
 - i. The writ or court order will specifically identify the affected property location or address.
 - ii. If the Writ is not attached, the landlord should be asked to provide a copy.
3. After determining the validity of the order and the receipt, a peace officer may proceed with the enforcement of the applicable sections of the law as shown above.

Reference

POST ORDER 11-06

12008.2 EVICTION ADDRESSES

- (a) Civil Field Deputies will proceed with evictions as long as the property on the Writ matches either the Post Office Description or the County Recorder's Description of the property.
 1. If you have legitimate doubts whether or not you are conducting the eviction at the proper address, stop the eviction until the property on the writ can positively be matched with the actual address.

Reference

POST ORDER 10-02

12008.3 EVICTIONS WITH ANIMALS

When we respond to an eviction and animal(s) are present, the Deputy will make a determination if there is reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal or the health or safety of others (PC 597.1)[1]. If the Deputy believes these conditions exist, the Deputy will contact Animal Control. Animal Control will take possession of the animal(s) if the elements of PC 597.1 [2] are met. If the elements of PC 597.1 [3] are not met, Animal Control will leave the animals in the care of the landlord, new owners, or their representatives and will accept the animal(s) after the time period in Civil Code 1983 has expired.

(a) No Protective Action Necessary

If the Deputy determines no protective action is necessary, the animal(s) will be left with the landlord, new owner, or their representative who must then comply with CC 1815, 1816, and CCP 1174 [4]. The landlord is the involuntary depositary not the Sheriff's Office. If the landlord, new owner, or their representative refuses to take possession of the animal, the Deputy will not complete the eviction.

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(b) Tenant or Previous Owner Present

If the evicted tenants or previous owners are present at the time of the eviction they should be encouraged to take the animals with them when they leave. However, the Sheriff's Department has no authority to force them to take the animals when they vacate the property.

- (a) The Sheriff's Department could be liable if a Deputy forces the evictees to leave with an animal and the animal injures them or someone else.

(c) Additional Information

If the plaintiff or their agent needs additional information on how to care for the left behind animals refer them to the animal control website at www.oc.ca.gov.

Reference

POST ORDER 11-01

12008.4 EVICTING LODGERS FROM HIRED ROOMS

(a) Civil Code Section 1946.5

1. Civil Code Section 1946.5 [1] became law to assist landlords in removing a lodger who resides with the owner of a dwelling unit.
2. When specific conditions exist, a landlord can avoid bringing an action for unlawful detainer against an occupant.

(b) Conditions

1. For this statute to apply, all of the following conditions must exist:
 - i. The dwelling unit must also be occupied by the owner.
 - ii. The owner must retain a right of access to all areas of the dwelling and have overall control of the dwelling unit.
 - iii. Only one lodger can reside in the unit. If there is more than one lodger, even mother and child, the usual unlawful detainer process must be followed; and
 - iv. The lodger must have contracted either for room, or room and board.

(c) Definitions

1. A "Lodger" is a person who rents a room from the owner of a dwelling unit, who personally occupies the dwelling, retains the right of access to all areas of the dwelling unit occupied by the lodger, and has overall control of the entire dwelling unit.

(d) Lease Termination

1. Termination of the arrangement may be done by either party giving written notice to the other of the intention to terminate. The written notice is typically required at least thirty (30) days before the date of termination. However, the parties

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may agree to as little as seven (7) days notice to terminate when the tenancy is created.

2. Notice shall be given by one of the following (Civil Code 1946)[2]:
 - i. Personally
 - ii. By substitute service and mailing a copy:
 - iii. By posting and mailing a copy; or
 - iv. By certified or registered mail, restricted delivery, with a return receipt requested.
3. Upon expiration of the notice, any right of the lodger to remain in any part of the dwelling is terminated.
 - i. The person may be removed pursuant to Penal Code 602.3 [3], or other applicable provision of law.
 - ii. The lodger may be arrested by the owner pursuant to PC 837 (Private Person Arrest)[4].
 - A. The arrest is not made by the law enforcement agency.
 - B. Pursuant to PC 142(a) [5], the officer will receive custody of the arrested person then cite and release.
 - iii. If the person refuses to leave, the officer is not precluded from removing the person from the premises.
4. Removal of the lodger under authority of PC 602.3 only applies to the owner-occupied dwelling where a single lodger resided.
5. Any personal property left on the premises will be stored by the property owner pursuant to Civil Code 1965 [6].

References:

POST ORDER 06-25

California State Sheriffs' Association Civil Procedures Manual

California Code of Civil Procedure

12008.5 RECEIPT FOR POSSESSION OF REAL PROPERTY

(a) Signed Receipt of Possession

1. Field Deputies should make every effort to obtain a signed "Receipt of Possession" from the plaintiff when we have served a Writ of Possession Real Property and Notice to Vacate on a defendant or property.
 - i. If the plaintiff refuses to sign the receipt of possession, state so on the service ticket and complete the eviction.

(b) Plaintiff not Present

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1. In no circumstances will we complete an eviction if the plaintiff or their representative is not present at the time of the lockout.

Reference

POST ORDER 10-02

12008.6 LANDLORD ALREADY IN POSSESSION

- (a) Civil Field Deputies will proceed with evictions even if the landlord is already in possession.
- (b) The Sheriff's Department must carry out all lawful orders of the court and must complete the eviction levy even if the landlord already has possession.
- (c) If the tenant is present and claims the landlord illegally evicted them and demands to make a private person's arrest:
 1. If you are in a non-sheriff jurisdiction area, contact the local police agency to handle the potential violation of CPC 418 [1]. Make a log entry as necessary.
 2. If you are in a sheriff jurisdiction area, take appropriate actions according to the patrol manual and legal source book.
- (d) If the landlord insists on going forward with the eviction, we must proceed and enforce the separate Civil Court Writ.

References

POST ORDER 10-02

For more information about landlord and tenant disputes, refer to the OCSD Patrol Operations Manual (POM) Section 10 – Civil Process and Enforcement Issues.

California Legal Source Book Section 5.14 - Search & Seizure Private Persons Arrest

12008.7 WRIT OF POSSESSION-CLAIM AND DELIVERY

A Claim and Delivery is not an action in and of itself. It is a provisional remedy, which allows the plaintiff to recover specific property in the possession of a defendant. Until a court action determines otherwise, possession of the property is only temporary. Property may be seized from the possession of the defendant, or a person acting as an agent for the defendant with no ownership interest.

- (a) Writ
 1. The writ must have the following:
 - i. Directed to the Sheriff.
 - ii. Describe the specific property to be seized.
 - iii. Specify any private place to be entered to take possession of property.

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- iv. Direct the Sheriff to levy on the property if found. Hold until released or sold.
 - v. Inform the defendant of the right to object to the undertaking, or obtain redelivery by filing an undertaking.
- (b) Seizing Property
 - 1. The Sheriff's Department may seize the described property located in any public place.
 - 2. It may be seized only from the defendant or the defendant's agent.
 - i. The definition of an agent is not always clear.
 - ii. In most cases, this is the person in possession of the property not claiming ownership or lien.
- (c) Forcible Entry
 - 1. If the property to be seized is located in a private place, all efforts to have the property delivered to the levying Deputy must be attempted.
 - i. Caution should be exercised when executing this type of levy.
 - 2. A Writ of Possession (Claim and Delivery) has a provision for an automatic break in order; if the plaintiff followed CCP 514.010(c) [\[1\]](#), the judge signed the Writ, and the address to be forcibly entered, if necessary, is located in box 2 of the writ.
 - i. The Deputy should always make every reasonable effort to obtain peaceful entry.
 - ii. If the property is not voluntarily delivered, the Deputy may then make forcible entry in such a manner as they reasonably believe will cause the least damage to the building.
 - 3. If no one is present when the property is levied, the writ authorizing the levy must be posted in the most conspicuous place closest to where the property was seized.
 - i. Copies of all documents will then be mailed to the defendant.
 - 4. If a Deputy believes that entry and seizure will involve substantial risk or serious injury to anyone, the Deputy shall not enter.
 - i. The Deputy will return the writ to court for further direction.
- (d) Property in Possession of Lien Holder
 - 1. If the property is in the possession of a lien holder, we shall not levy unless:
 - i. The lien holder is a named defendant and covered by an undertaking, or
 - ii. The lien holder is paid, thus releasing the lien.

Reference

POST ORDER 08-03

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12008.8 COMPLETION OF PREJUDGMENT CLAIM OF RIGHT TO POSSESSION

- (a) Code of Civil Procedure Section 415.46 [\[1\]](#)
 - 1. There are two places on the claim form which must be completed by the server at the time copies of the Summons and Complaint for Unlawful Detainer are served, left, and posted.
 - 2. In order to fully comply with the requirements of this Section, servers are reminded to fill in the DATE OF SERVICE box.
 - i. When possible, mailing will be completed by the civil professional staff on the same day as the posting.
 - ii. However, the date entered on the claim form by the server will be the date the Summons is served or delivered and posted regardless of when mailing is completed.
 - 3. Fill in the proper filing fee amount.
 - i. The filing fee is determined by the current Court Fee Schedule.

12008.9 RECREATIONAL VEHICLE PARK LAWS

Pursuant to Section 799.58 of the Civil Code [\[1\]](#), law enforcement agencies are required to remove a defaulting occupant from a recreational vehicle park when all the requirements of the Civil Code have been met.

California Civil Code, Section 799.58

"Subsequent to serving a copy of the notice specified in this article to the city police or county sheriff, whichever is appropriate, and after the expiration of 72 hours following service of the notice on the defaulting occupant, the police or sheriff, shall remove or cause to be removed any person in the recreational vehicle. The management may then remove or cause the removal of a defaulting occupant's recreational vehicle parked on the premises of the park to the nearest secured storage facility. The notice shall be void seven days after the date of service of the notice."

(a) Conditions Prior to Removal

The responding agency shall, proceed to remove the occupant from a recreational vehicle when all of the following conditions have been met:

- (a) The appropriate law enforcement agency must have been served a copy of the 72-hour notice that was served upon the defaulting occupant.
- (b) The notice must reference the date of service upon the occupant. The notice and removal procedure is void if more than 7 days has elapsed from the date of service upon the occupant.
- (c) The notice served upon the occupant must state that if the defaulting occupant does not remove the recreational vehicle from the premises of the park within 72 hours after receipt of the notice, the management has authority to have the recreational vehicle removed from the lot to the nearest storage facility.

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- (d) In the event that the defaulting occupant is incapable of removing the occupant's recreational vehicle from the park because of a physical incapacity or because the recreational vehicle is not motorized and cannot be moved by the occupant's vehicle, the default shall be cured within 72 hours, but the date to quit shall be no less than seven days after service of the notice.
- (b) Determining Factors

When the responding law enforcement agency arrives at the RV Park, the following must be determined to exist:

- (a) Registration agreement between a park and an occupant shall be in writing and shall contain the term of the occupancy and the rent therefore, the fees, if any, to be charged for services which will be provided by the park, and a statement of the grounds for which a defaulting occupant's recreation vehicle may be removed as specified in 799.22 of the Civil Code [2] and containing the telephone number of the local traffic law enforcement agency. (CC 799.43 [3])
- (b) At the entry to the recreational vehicle park, or within the separate designated section for recreational vehicles within a mobile home park, there shall be displayed in plain view on the property a sign indicating that the recreational vehicle may be removed from the premises for the reasons specified in Section 799.22 of the Civil Code and containing the telephone number of the local traffic enforcement agency. (CC 799.46 [4])
- (c) The person to be removed must fit the legal definition of a "defaulting occupant."
 - i. An "occupant" is the owner or operator of a recreational vehicle who has occupied a lot in the park for 30 days or less.
 - ii. A "defaulting occupant" means an occupant who fails to pay his or her occupancy in a park or who fails to comply with reasonable written rules and regulations of the park given to the occupant upon registration.
 - iii. If a subject has been in a park longer than 30 days, he or she is classified as a "tenant" and after nine months, he or she is classified as a "resident".
- (d) Tenants and residents are not subject to the provisions of removal outlined in this section.

Reference:

POST ORDER 06-33

California State Sheriffs' Association Civil Procedures Manual

California Code of Civil Procedure [5]