

Writ of Possession

12008.1 EVICTION ENFORCEMENT

- (a) 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.
- (b) Procedure
 - 1. Deputies shall verify address on writ of execution or writ of possession to ensure it matches the physical address.
 - 2. Post notice to vacate/serve occupants.
 - 3. Deputies shall conduct a check at the eviction location prior to the day of eviction. Initial post of notice to vacate does not meet this requirement. Checks are an important step where deputies can gather information such as occupancy or potential threats. At least one check is required, but other checks may be completed if time allows, or a situation dictates otherwise (See 12019.2 - Civil Process Elevated Risk). All checks shall generate a call for service. These checks can be initiated via radio broadcast/MDC. In addition, checks will be noted in the County Suite System (CSS).
 - 4. Deputies shall notify the LA Clear deconfliction center of the eviction address prior to attempting an eviction. Any conflicts such as an ongoing criminal investigation may delay the eviction. Plaintiffs / defendants should not be notified as to the cause of delay as this might jeopardize law enforcement agents or the investigation.
 - 5. For any eviction attempt at least four deputies shall be present. When able, a sergeant should also be present for all evictions. Any eviction attempt with less than four deputies must be approved by the sergeant prior to making the attempt. Verbal authorization meets this standard.
 - 6. A call for service shall be initiated with OCSD Dispatch prior to the eviction attempt. This call for service shall be initiated via radio broadcast by a deputy on the call. The broadcast shall at minimum relay the call type (i.e., EVR/EVB), and the location of the eviction. Any additional deputies may assign themselves to the call via mobile data computer (MDC). A deputy may bypass the radio broadcast because of emergency traffic but should resume radio use as soon as possible.
 - 7. If prior to or during an eviction attempt, Deputies observe an unsafe/dangerous situation or potential threat, the deputy may stop the attempt and move the eviction to a later date. If this is the case, deputies shall utilize additional resources or tactics to safely complete the eviction (See 12019.2 - Civil Process Elevated Risk).
 - 8. Evictions will only be performed by uniformed sworn personnel. Although plain clothes may be used for surveillance purposes, all personnel attempting the eviction shall be in uniform.

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9. Although the eviction service is a civil matter, resistance from occupants physical/verbal which delay or interfere with the lawful service may constitute a criminal violation of California Penal Code. Common Penal Code violations include, but are not limited to:
 - i. CPC 148(a)
 - ii. CPC 243(b)
 - iii. CPC 69

As noted in section 12008.2, it is the responsibility of the local agency to enforce any potential criminal violations after a Writ of Possession for Real Property has been enforced by Sheriff's Department personnel.

10. When encountering a noncompliant occupant, a deputy may determine it is necessary to halt the eviction and attempt later. However, the writ allows deputies to forcibly remove occupants who refuse to leave. When using force, deputies shall follow and adhere to OCSD Policy (Policy 300). If force is used, deputies should consider if any applicable law violation applies (See above).

12008.2 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

1. 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. However, it is the responsibility of the local agency to enforce any potential criminal violations after a Writ of Possession for Real Property has been enforced by Sheriff's Department personnel.

(b) Plaintiff's Receipt for Possession

1. In addition to the posting of the "Notice of Restoration" on the subject property following a successful eviction, the landlord or plaintiff in the case is provided with a Copy.
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 "Notice of Restoration" 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.

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4. This form also includes on its face the citation of Penal Code 419, Repossession of land after removal by legal process.

12008.3 EVICTION ADDRESSES

- (a) Deputies shall use due diligence to ensure the writ matches the eviction property prior to conducting eviction.
 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.

12008.4 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). If the Deputy believes these conditions exist, any potential criminal violation is the responsibility of the local agency (See 12008.2).

- (a) 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. The landlord is the involuntary depositary not the Sheriff's Office.
- (b) Tenant or Previous Owner Present
 1. 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.
 - i. 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
 1. If the plaintiff or their agent needs additional information on how to care for the animals left behind, refer them to OC Animal Care at (714) 935-6848.

12008.5 NOTICE OF RESTORATION TRIP TICKET FOR REAL PROPERTY

- (a) Field Deputies should make every effort to obtain a signed Notice of Restoration Trip Ticket for Real Property from the plaintiff when we have served a Writ of Possession Real Property and Notice to Vacate on a defendant or property.
 1. If the plaintiff refuses to sign the receipt of possession, state so on the service ticket and complete the eviction.
- (b) Plaintiff not Present
 1. In no circumstances will we complete an eviction if the plaintiff or their representative is not present at the time of the lockout.

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12008.6 LANDLORD ALREADY IN POSSESSION

- (a) The Sheriff's Department must carry out all lawful court orders. A Writ of Possession will be executed and the eviction levy completed even if the landlord appears to have already taken possession, unless the plaintiff or their authorized agent formally cancels the eviction.
- (b) If the tenant is present and claims the landlord illegally evicted them prior to the deputies conducting the eviction and demands to make a private person's arrest:
 - 1. Contact the local police agency/appropriate OCSD division to handle the potential violation of CPC 418.
- (c) If the landlord insists on going forward with the eviction, we must proceed and enforce the separate Civil Court Writ.

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.
 - 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.

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- 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), 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 clerical 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.