

**STATEMENT WHY TEMPORARY WRIT OF  
RESTITUTION SHOULD NOT ISSUE  
TENANT INSTRUCTIONS  
(Form #23)**

**INTRODUCTION**

If you have been served an Ex Parte Order to Show Cause why a Temporary Writ of Restitution Should Not Issue, Form #15, this document will help prepare you for the Show Cause hearing.

However, you should also be sure that you have filed Form #21, Answer to Complaint for Unlawful Detainer. The Statement Why Temporary Writ of Restitution Should Not Issue, Form #23, is not an Answer and does not take the place of an Answer. If you do not Answer, the court could decide the case without your involvement (commonly referred to as a Default Judgment).

**WHAT IS A TEMPORARY WRIT OF RESTITUTION?**

A Temporary Writ of Restitution is a way for the landlord to make you move before the end of the case. Even though it is not technically the end of the case, it may be the most important hearing you will have regarding the eviction case.

If a Temporary Writ of Restitution does issue, you will be required to leave your mobile home or, if the judge gives you permission and you have the funds to do so, you may be able to take your mobile home with you.

**WHAT IS THE IMPORTANCE OF THIS FORM?**

This hearing is very important and may, as a practical matter, end the case. These instructions provide a guide on how to fill out Form #23, Statement Why Temporary Writ of Restitution Should Not Issue, and is designed to help you organize yourself in preparation for that hearing. You may file the document but you do not have to.

If you file this form before the hearing, the court will have information during the hearing that you might not have time to provide at the hearing. It is also a way for you to organize your thoughts and think about the case so you will be better prepared at the hearing. If you file it with the court, you must send a file stamped copy to the landlord

or, if the landlord is represented by an attorney, to that attorney. To show that you have done that, you must fill out the Certificate of Service at the end of the completed form.

You are advised to file an Answer to the Complaint for Unlawful Detainer, Form #21. Form #23 is not a substitute for Form #21. The purpose of Form #23 is to give the court additional information that might lead it to deny the landlord's request for a temporary writ.

### **WHAT ARE THE TIME FRAMES INVOLVED IN A MOBILE HOME EVICTION CASE?**

Under the normal rules, you would have 20 calendar days to file an Answer after you have been served with a Complaint for Unlawful Detainer, Form #10. However, eviction rules allow the landlord to shorten the time you have to Answer to as little as 10 judicial days<sup>1</sup> after you receive the Complaint. The landlord may get an Order Shortening Time to Answer, Form #12, without involving you. Judicial days do not include weekends or legal holidays. In determining when you must Answer, you do not include the date you were served with the Complaint. If you need more time to Answer, you may file a Motion for Enlargement of Time to Answer, Form #24. Instructions may be found at the same location at which you acquired these instructions.

Unless there are extraordinary circumstances, the hearing on an Order to Show Cause Why a Temporary Writ of Restitution Should Not Issue cannot occur until the 11<sup>th</sup> calendar day after you have been served with a Summons and Complaint. Also note that the landlord can ask for a Temporary Writ hearing before the 11<sup>th</sup> calendar day for "extraordinary" reasons. Be aware that the Order to Show Cause itself, in addition to giving you the date and time for the Show Cause hearing, may also have the date and time for a trial. Alternatively, such trial date may be determined at the show cause hearing.

#### **NOTE**

The trial, which ultimately determines if you win or lose, may not occur less than 20 calendar days after you were served with the Summons and Complaint. However,

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<sup>1</sup> "Judicial Days" do not include date of service, weekends or legal holidays.

as described in these instructions, the landlord may attempt to make you leave before the final trial through a request for a Temporary Writ of Restitution. The landlord does not need to involve you in the setting of the hearing to determine whether the court will grant or deny the request for a Temporary Writ. However, the Landlord must serve you with the Order to Show Cause Why a Temporary Writ of Restitution Should not Issue which states the time and date of the hearing to decide whether a Temporary Writ of Restitution will issue.

### **IMPORTANT THINGS TO KNOW ABOUT THE HEARING DESCRIBED IN THE ORDER TO SHOW CAUSE**

1. The court will decide whether or not to grant the landlord's request for a Temporary Writ of Restitution.
2. If the court grants the landlord's request, the court will have to set a bond that the landlord is required to give to the court before the Temporary Writ can issue. Such bond needs to be sufficient to compensate you for your probable losses, including alternate housing costs that you will experience because you must leave your home.

### **WHAT DOES THE COURT TAKE INTO ACCOUNT IN DECIDING WHETHER TO GRANT OR DENY THE TEMPORARY WRIT?**

The court may wish to base its decision on whether the landlord has sufficient evidence to convince the court that the landlord would ultimately win the case. This is why it is important that you put forward information that you think shows that the landlord would not win and also why you should file an Answer to Complaint for Unlawful Detainer, Form #21.

As the court may also be concerned about the relative hardship that would occur, the court would look at the hardship you and your family would likely endure if the Temporary Writ were to issue and compare that to the hardship that the landlord would be required to endure if the court denied the Temporary Writ.

### **ADDITIONAL HELP**

It is best to seek assistance from an attorney since you could lose your home. You may be eligible for a free attorney from one of the organizations as listed on the disclaimer.

## **SPECIFIC INSTRUCTIONS FOR FORM #23**

### **Header**

You must fill in the blanks indicating what township and county as set forth on the Landlord/Plaintiff's Complaint for Unlawful Detainer, Form #10.

### **Parties**

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant as set forth on the Landlord/Plaintiff's Complaint for Unlawful Detainer, Form #10.

### **Case No. and Dept. No.**

Use the identical Case Number and Department Number as was assigned on the Landlord/Plaintiff's Complaint for Unlawful Detainer, Form #10.

### **Body of Statement**

Check 1.A. if you have answered; if you have not, check 1.B. Check 1.B.1. or 1.B.2 depending on whether the time to answer has expired. Normally you have 20 calendar days to answer from the date you are served with the Summons and Complaint. However, the landlord has the right to ask for an Order Shortening Time to Answer, Form #12, in this type of case. Such an order may have been served upon you at the time you were served the Summons and Complaint.

If time has expired, you may also check 1.B.3. if you intend to file an Answer. If the time has run and you want more time, you should explain in the space given at 1.B.3. why this time was not enough to answer and describe how much time you need.

Whether or not the time to answer was shortened and you intend to answer but you need more time, you may wish to file Form #24, Motion for Enlargement of Time to Answer.

### **Numbers 2 through 4**

Check and fill in the appropriate spaces and explain where relevant. Note that some of the items require that you make a choice, e.g., do not or do, has not or has.

## **EQUITABLE ISSUES**

### **Numbers 5 through 9**

Answer these if the landlord's claim against you is that you have not paid rent even if the landlord has also made other claims in the Complaint. Note that some of the items require that you make a choice, e.g., do or do not, are or are not, has or has not.

### **Numbers 10 through 12**

Answer these paragraphs if the landlord is evicting you for reasons other than non-payment of rent, even if the landlord also claims you have not paid rent.

## **SECTION ENTITLED PROBABLE LOSS THAT TENANT WILL EXPERIENCE IF TEMPORARY WRIT OF RESTITUTION DOES ISSUE**

### **Numbers 13 through 22**

These paragraphs advise the court about other issues the court may wish to consider in making its decision, but also allows you to describe to the court your probable losses that you and your family would experience if the court issues a Temporary Writ of Restitution.

### **Number 23**

Explain how the landlord will not be harmed.

## **SIGNATURE SECTION**

You must sign, print your name, and put in the date where indicated in the signature block.

## **CERTIFICATE OF SERVICE**

If you choose to file this document before your show cause hearing occurs rather than as a document you wish to hand to the court (with a copy for the landlord or landlord's attorney) you will need to complete the "Certificate of Service." The purpose is to prove you notified the other party that you have filed or intend to file the document. The service of this document on the other party may occur before or after actual filing with the court. It is best to serve and file on the same day.

Provide the date and name of the document you delivered to the landlord or the landlord's attorney.

Fill in the address of the landlord or landlord's attorney. If the landlord is represented by an attorney, the Certificate of Service must indicate that the document is being sent to the attorney and indicate the attorney's address. If the landlord is represented by an attorney, you should not send a copy to the landlord.

Check the method by which the document was delivered.

The signature and printed name of the server are required.