

*Residential  
Evictions  
Update*

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Topics for  
Today

Detainer Warrant Procedure

URLTA

Non - URLTA

Subsidized Housing

Domestic Violence Evictions



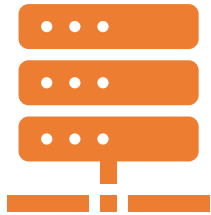
# Types of Detainer Warrants

29-18-102: Forcible Entry and Detainer

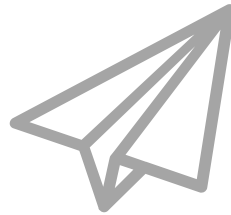
29-18-103: Forcible Detainer

29-18-104: Unlawful Detainer

# SERVICE OF DETAINER WARRANT TCA 29-18-15



PERSONAL SERVICE?



POSTING?



MAILING?



# Service of Detainer Warrant

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PERSONAL SERVICE = MONEY JUDGMENT

# Service By Other Means

Adult Found In Possession

Service On Contractually Named Party

Service On Absent Defendant


After Three Attempts - Service By Posting

# ADULT FOUND IN POSSESSION

- In commencing an action under this chapter, summons may be served upon any adult person found in possession of the premises, which includes any adult person occupying the premises; and service of process upon such party in possession shall be good and sufficient to enable the landlord to regain possession of such landlord's property.

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## SERVICE ON PARTY TO THE LEASE

- [S]ummons may be served upon a contractually named party, and service of process upon such party shall be good and sufficient to enable the landlord to regain possession of the landlord's property.
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# SERVICE ON “ABSENT” DEFENDANT

- If no adult found in possession, personal service of process on the defendant is dispensed with in the following cases:
- (A) Defendant is a nonresident;
- (B) Defendant cannot be found and there its believe that the defendant has left the state;
- (C) When the summons has been returned “not to be found in my county”;
- (D) When the name of the defendant is unknown and cannot be ascertained upon diligent inquiry;
- (E) When the residence of the defendant is unknown and cannot be ascertained upon diligent inquiry; or
- (F) When a domestic corporation has ceased to do business.

# SERVICE ON “ABSENT” DEFENDANT

- In those cases specified in subdivision (a)(1), where personal service of process on the defendant is dispensed with, the proceeding shall be governed by [§§ 21-1-203](#) -- [21-1-205](#), and in addition thereto, the plaintiff shall post or cause to be posted on the front door or other front portion of the premises a copy of the publication notice at least fifteen (15) days prior to the date specified therein for the defendant to appear and make a defense.
- [§§ 21-1-203](#) -- [21-1-205](#): SERVICE BY PUBLICATION

# POSTING

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(1) Attempt personal service of process on three (3) different dates;

(2) Document such attempts on the face of the warrant;

(3) After 3 attempts, unable to serve any defendant personally.

# Necessary Steps To Post

(A) Posting a copy of the warrant or summons on the door of the premises;

1

(B) Mail Warrant;

2

(C) Making an entry of this action on the face of the warrant or summons filed in the action; and

3

(D) Posted at least six days prior to hearing

# Posting = Possession

- Subdivision (e)(2) shall apply only to the service of process in an action brought to regain possession of real property, and shall not apply to the service of process in any action seeking monetary judgment.



# Continuances: TCA 29-18-118

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Maximum  
Continuance  
Is 15 Days  
Unless:

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Parties Agree;

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Landlord Consents; or

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No Court Is Being Conducted

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# Appeals

TCA 29-18-128  
APPEAL AND  
REVIEW

TCA 29-18-129  
CIRCUIT COURT  
CERTIORARI AND  
SUPERSEDEAS

# Writ of Possession

When judgment is rendered in favor of the plaintiff, in any action of forcible entry and detainer, forcible detainer, or unlawful detainer, brought before a judge of the court of general sessions, and a writ of possession is awarded, the same shall be executed and the plaintiff restored to the possession immediately.



# Ten Day Appeal 29-18-129

An appeal will also lie in suits commenced before general sessions judges, under this chapter, within the ten (10) days allowed by [§ 27-5-108](#), as in other cases, the appellant, if the defendant, **giving bond as in the case of a certiorari.**

# Certiorari and Supersedeas 29-18-129

- Removed to Circuit Court within thirty (30) days
- Must set forth meritorious reason
- Bond, with security sufficient to cover all costs and damages;
- **If the defendant is the applicant, bond must also cover the value of the rent of the premises during the litigation.**

29-18-130 (b)(1)

## LANDLORD BOND REQUIREMENTS



If the defendant pray an appeal, then, in that case, the **plaintiff** shall execute bond, with good and sufficient security, in **double the value of one (1) year's rent of the premises**, conditioned to pay all costs and damages accruing from the wrongful enforcement of such writ...



29-18-130

BUT NOT SO FAST . . .

If Defendant appeals, Defendant must post a bond for one year of rent. If Defendant does not post bond, Plaintiff is not required to post bond to obtain possession.

# LANDLORD STILL HAS THE TRUMP CARD

In all cases, the Landlord shall not be required to post a bond to obtain possession in the event the defendant appeals without posting the requisite bond.

The Landlord shall be entitled to interest on the judgment, which shall accrue from the date of the judgment in the event the defendant's appeal shall fail.

# URLTA

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Anderson

Blount

Bradley

Davidson

Greene

Hamilton

Knox

Madison

Maury

Montgomery

Putnam

Rutherford

Sevier

Shelby

Sullivan

Sumner

Washington

Williamson

Wilson

# URLTA

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- Five Day Grace Period
  - Tenants Have Five Day Grace Period
  - Sunday & Legal Holidays Do Not Count
  - Maximum Late Fee: 10%



# URLTA

- Notices:
  - Fourteen Day
  - Seven Day (Repeat Violations)
  - Three Day (Violence, Threats, Unsanitary Conditions)
  - Waiver of Notice For Nonpayment





# URLTA

- OTHER TOPICS:
  - Security Deposits
  - Abandonment
  - Essential Services
  - Landlord Obligations
  - Tenant Obligations

# Non-URLTA

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Applies To All Other Counties

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TCA 66-7-101, et seq.

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Only Four Statutes Actually Apply

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Section 109: Termination of Tenancy

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Section 110: Tenants With Disabilities

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Section 111: Service and Support Animals

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Section 112: Domestic Abuse

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## Non-URLTA

- Notices:
  - 14 Day
  - 30 Day
  - 3 Day

# Subsidized Leases

## Sources:

HUD

THDA

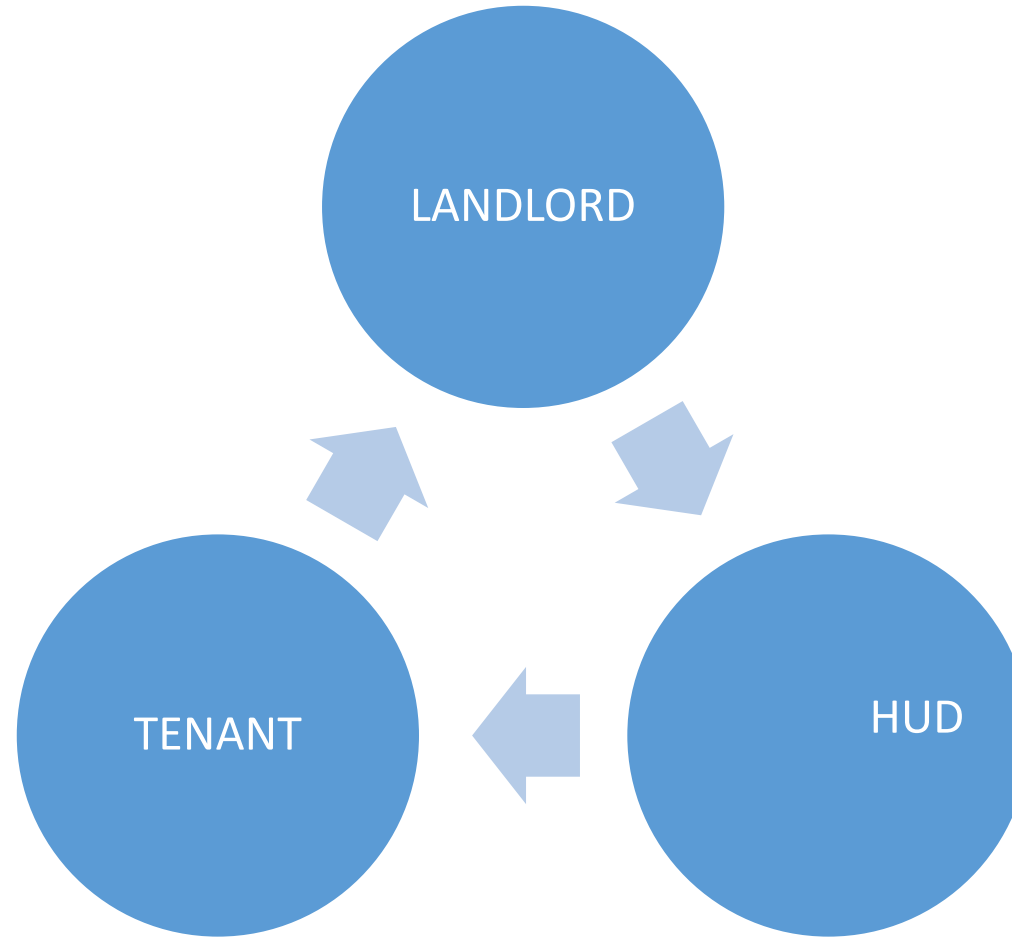
Rural Development



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# THREE-WAY AGREEMENT



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# HUD-LANDLORD

**Housing Assistance Payments Contract  
(HAP Contract)  
Section 8 Tenant-Based Assistance  
Housing Choice Voucher Program**

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**U.S. Department of Housing  
and Urban Development**  
Office of Public and Indian Housing

## Part A of the HAP Contract: Contract Information

(To prepare the contract, fill out all contract information in Part A.)

**1. Contents of Contract This**

HAP contract has three parts:

Part A: Contract Information

Part B: Body of Contract Part

C: Tenancy Addendum



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# HUD-TENANT

- Sets the Rent
- Sets Amount of Assistance from HUD
- Lease May Not Contradict Tenancy Addendum

## **TENANCY ADDENDUM**

### **Section 8 Tenant-Based Assistance**

### **Housing Choice Voucher Program**

(To be attached to Tenant Lease)

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#### **1. Section 8 Voucher Program**

- a. The owner is leasing the contract unit to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD).
- b. The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to assist the tenant in leasing

# LANDLORD- TENANT

OMB Approval No. 2502-0204  
(Exp. 06/30/2017)

## MODEL LEASE FOR SUBSIDIZED PROGRAMS

1. Parties and Dwelling Unit: The parties to this Agreement are <sup>(A)</sup> \_\_\_\_\_, referred to as the Landlord, and <sup>(B)</sup> \_\_\_\_\_, referred to as the Tenant. The Landlord leases to the Tenant(S) unit number <sup>(C)</sup> \_\_\_\_\_, located at \_\_\_\_\_ <sup>(D)</sup> \_\_\_\_\_ in the project known as <sup>(E)</sup> \_\_\_\_\_.



# SUBSIDIZED EVICTIONS

- Challenges Judges Face:
  - Eviction is Often From Housing of Last Resort
  - State vs. Federal Law Requirements
  - Notice Requirements May Differ From State Law



2. Termination notice.
  - a. If the owner proposes to terminate a lease, the owner must give the tenant written notice of the proposed termination.
  - b. For tenants with a disability, the notice must be provided in a form accessible to the tenant.

WRITTEN  
NOTICE  
REQUIRED!

# IMPORTANCE OF NOTICE

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OWNER MUST RELY  
UPON THE REASONS SET  
FORTH IN THE NOTICE  
IN COURT

IF ADDITIONAL  
MISCONDUCT OCCURS  
AFTER THE NOTICE,  
LANDLORD MUST SEND  
AN ADDITIONAL NOTICE

# DOMESTIC VIOLENCE EVICTIONS

- VIOLENCE AGAINST WOMEN ACT
- DOMESTIC ABUSE – TENNESSEE LAW



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# VIOLENCE AGAINST WOMEN ACT (VAWA)

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APPLIED TO SUBSIDIZED  
HOUSING

SPECIFICALLY  
PERMITTED  
BIFURCATION OF THE  
LEASE IN CASES OF  
DOMESTIC ABUSE

TENNESSEE  
LAW  
DOMESTIC  
ABUSE



URLTA & NON-URLTA  
STATUTES ARE IDENTICAL



URLTA: 66-28-205 &  
66-28-517



NON-URLTA: 66-7-109 &  
66-7-112

# DOMESTIC ABUSE: EVICTIONS

If domestic abuse, as defined in 36-3-601, is the underlying offense for which a tenancy is terminated, only the perpetrator may be evicted.

Landlord shall not evict the victims, minor children under eighteen (18) years of age, or innocent occupants.

Perpetrator shall remain financially liable.

# DOMESTIC ABUSE: EVICTIONS

Landlord may remove the perpetrator from the lease agreement

Require the remaining adult tenants to qualify for and enter into a new agreement

Landlord shall not be responsible for any and all damages suffered by the perpetrator due to the bifurcation and termination of the lease agreement in accordance with this section.



# DOMESTIC ABUSE: EVICTIONS

If domestic abuse, as defined in [§ 36-3-601](#), is the underlying offense for which tenancy could be terminated, the victim and all adult tenants shall agree, in writing, not to allow the perpetrator to return to the subject premises or any part of the community property, and to immediately report the perpetrator's return to the proper authority, for the remainder of the tenancy. A violation of such agreement shall be cause to terminate tenancy as to any victim and all other tenants.

# STEPS VICTIM MUST FOLLOW

(1) must be granted an order of protection,

(2) provide a copy to landlord and

(3) the order must:

- (A) Provide for the perpetrator to move out or vacate immediately;
- (B) Prohibit the perpetrator from coming by or to a shared residence;
- (C) Require that the perpetrator stay away from the victim's residence; or
- (D) Find that the perpetrator's continuing to reside in the rented or leased premises may jeopardize the life, health, and safety of the victim or the victim's minor children.



## CONSEQUENCES OF NOT FOLLOWING STEPS

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Failure to comply with this section, or dismissal of an order of protection that allows application of this section, abrogates the rights provided to the victim, minor children, and innocent occupants under this section.

# DOMESTIC ABUSE: VICTIMS RIGHT TO TERMINATE LEASE

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Written notice to landlord that states:

Tenant is a domestic abuse victim, sexual assault victim or stalking victim

Requests release from rental agreement

Mutually agreed upon release date within 30 days of written notice

Copy of either:

- (1) Valid Order of Protection Following a Hearing; or
- (2) Documentation evidencing a criminal charge

***LANDLORD  
TENANT  
UPDATE***

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