

EVICTIION GUIDELINES FOR PARK OPERATORS

Presented by:

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I. 2 TYPES OF EVICTIONS:

The Supreme Court of Ohio has held in *Schwartz v. McAtee*, cite omitted, that manufactured home communities in Ohio can evict for one of only two reasons – and two reasons only!

1. Failure to pay rent; and
2. Two (2) Material Violations of the community's rules/guidelines for living.

⇒ See Guidelines and Ohio Eviction Checklist

II. ABANDONED HOMES

Covered by Revised Codes sections 1923.12, 1923.13 and 1923.14, these provisions address Ohio's Abandoned Mobile Home Law.

III. ACCEPTING LATE RENT (THE REPEAT LATE PAYER)

If the park has accepted late payment more than two times prior, you should send a letter to tenant informing him that his rent will no longer be accepted late and then if it is late again, you can evict.

IV. ACCEPTING PAYMENT AFTER EVICTION HAS BEEN STARTED

General Rule - do not accept payment (cash or cashiers checks) of rent after eviction has been initiated. If it is dropped off, return it promptly, informing the tenant that you do not accept late payment.

The only exception to this rule is that you can hold on to personal checks as long as you do not deposit the check (**BUT NO CASHIERS CHECKS**).

1. Identify the persons to be evicted

First, determine whom you may evict. This will narrow potential claims for discrimination as well as bad eviction actions:

1. A resident, holding over the term of the lease, who fails to remedy a notice of "material violation" within thirty days after receipt of the notice;
2. A resident who is in default of rent. This could also include a resident holding over on an oral agreement with management who is in default of rent payments;
3. Any material violations which is not remedied within thirty days of receipt of a notice of material violation or upon notice of a second material violation.

*Please note: Ohio law has not defined "material violation". However, in the leading Ohio Supreme Court case *Schwartz v. McAtee* (1986), 22 Ohio St. 3d 14, the Ohio Supreme Court held that it must be a violation of a resident obligation which "materially affects health and safety". What is meant by "materially affects health and safety" is still subject to individual opinion, however. Therefore, whether a resident's action is a "material violation" is determined on a case-to-case basis by the court before which the dispute is reviewed. Thus, it is best to be conservative when attempting to determine whether a resident's action constitutes a "material violation".

Also, when determining whether you have a "material violation", look specifically to your park rules and regulations, as well as to those duties required of the resident by the Ohio Revised Code, as set forth in Attachment A. Reference the park rule, regulation or Ohio Revised Code provision which you believe has been violated in your notice to the resident of the material violation. Also, if you briefly explain why the violation is material, you will have laid the groundwork for any future eviction action.

Once you have determined that the resident may be evicted, please refer to the below-listed procedures for guidance. (As well as the advice of your local attorney):

2. Give proper notice

A common question is whether a three-day notice must be given or a thirty-day notice must be given. Please note the following:

A **three-day notice** must be given in any action for eviction where:

- a) the resident is being evicted for violating one or more of the Resident's obligations set forth in R.C. Chapter 3733.101, listed in Attachment A or there has been a "material violation" of the park rules which has not been remedied.

[For example, failing to cut the grass is not among those Resident duties listed in §3733.101, and management would have a hard time arguing that it is a violation which affects the health and safety of other tenants. Best to look under the terms of the lease or your rules for a breach or a material violation.]

- b) the resident is in default of a lease term. This is most often the failure to pay rent in accordance with the lease.

NOTE: A three-day notice must comply with the following:

1. It must be in writing (regardless of whether the lease is written or not);
2. When counting the three days, do not include weekends, holidays or the date of service (which is the date the resident was served with notice);
3. Management should make three copies, one for the resident, one for management and one for court;
4. The notice must be delivered to the resident by certified mail, return receipt requested, in person or by leaving it at the home.

See Attachment B for a sample of a Notice of Material Violation and Attachment C for a sample of a Notice of Termination of Rental Agreement. Attachment D is a three day notice which initiates the eviction action.

3. The Eviction Petition

I. PICK THE PROPER COURT

Once you have given your three day notice to evict, then you must file your petition to evict in the proper court. Your local rules of procedure will provide more guidance on selecting the proper court. It is imperative that you select the proper court.

Usually, the court will be the municipal, county or local court of common pleas. Check to see if your local municipal court has a housing division, since that is where the petition most likely should be filed.

If you do not want to consult a local attorney for this answer, check your local white pages under government services and call the clerk's office for your local municipal or county court.

II. PREPARE YOUR PETITION (aka "The Complaint")

Every petition for eviction (or complaint) must contain the following:

1. The name and address of the owner of the Park;
2. The names and addresses of all of the residents in the home;
3. The facts serving as the basis for the eviction action;
4. A statement that the three-day notice has been given;
5. A copy of the lease should be attached, although it is not required;
6. You should prepare a minimum of three copies of the complaint for filing. You will find that the clerk of court will require one, each defendant will require one and you should keep one copy for yourself. Have the copies time-stamped by the court clerk at the time of filing; and
7. File the complaint in court. This is a simple process once you have located the proper court. Take the complaint with your original signature, plus your copies, and go to the filing window of the office of the clerk of court. You will have to pay some sort of filing fee so call ahead to find out what that fee will be. Don't forget to get a receipt for your payment and have everything time-stamped. (See Attachment F).

III. SERVE THE COMPLAINT

Once you have filed your complaint, the clerk of courts will arrange for service of the complaint, by certified mail, on each of the named defendants. However, if service is refused or the certified letter is unclaimed, then you will be required to file a request with the clerk of court to attempt service again by either:

1. Personal service - (This is where the sheriff or other process server personally serves the defendant)
2. Residence service - (Where the complaint is left with someone of suitable age or discretion residing in the home)
3. Ordinary mail service - (Just as it sounds - the complaint is mailed to the home)

See Attachment E - This is a request to the Court to serve your complaint.

Note: This may vary from court to court.

Note: You must be able to prove that you have served the defendants.

Keep all receipts of service. Record dates that service was attempted by you or requested by you. Also, regardless of your request to the clerk's office, you (or your attorney) are responsible for ensuring that service was completed. Therefore, prior to any hearing, call the clerk's office to check to see that service has been completed. The clerk's office will convey that information to you over the telephone.

4. The Hearing

An eviction petition is typically given a hearing. Some courts have hearings before a judge, some before a referee appointed by the judge. Before you go to court, have the following:

- i. Proof of service of the three-day notice
- ii. Time-stamped copy of the complaint
- iii. Proof that the defendants were served with the complaint by the clerk of court
- iv. A copy of the lease and your rules
- v. Rent receipts, if rent is an issue, or any other documentation which supports the reason for the eviction. Bring three copies of each document you want to present as support for your case: one for the judge, one for the defendant and one for you to refer to during the hearing.
- vi. Bring any witnesses you can to support your action.

Note: If you are conducting this process by yourself and not through an attorney, then prepare a written statement of the facts of your case for the judge. Avoid using any opinion and do not "vent your spleen". Also, avoid making negative, derogatory comments about the defendant: the judge/referee will take you and your case more seriously if you look and sound objective and professional.

See Attachments D for the Court papers that will have to be filed.

BE PREPARED FOR THE DEFENDANT'S CASE AGAINST YOU

The defendant/resident will raise the following possible "top-ten" defenses:

1. The complaint was filed in the wrong court (improper jurisdiction);
2. Failure to deliver proper notice;
3. Management has failed to comply with its obligations as listed in Revised Code Section 3733.10 (attached);
4. The rental agreement is void as an improper contract (which brings into play contract defenses such as mistake of fact, failure of consideration, etc.);
5. Park management is retaliating against the resident for lodging complaints about health, safety and welfare or joining or organizing a tenants rights group;
6. Rent is not due (or is in escrow) and/or the other alleged violations have not occurred;
7. The resident has declared bankruptcy or is about to;
8. Lack of ability to contract (minors cannot enter into a contract);
9. There was no material violation/or violation was corrected;
10. The complaint was not served properly; and
11. Sexual harassment, racial, gender, familial status discrimination.

NOTICE TO RESIDENT OR RESIDENTS OF MATERIAL VIOLATION OF PARK RULES, PUBLIC HEALTH COUNCIL, OR STATE AND LOCAL HEALTH AND SAFETY CODES

(Ohio Revised Code Section 3733.13)

To: _____

Date: _____

Lot No. _____ of _____

Dear Resident(s):

It has come to the attention of the park operator of _____ Mobile Home Park that you hve committed or have allowed to be committed a material violation or violations of the rules and regulations of _____ Mobile Home Park and/or of the public health council and/or of applicable state and local health and safety codes in the following aspects:

Grounds of Violation(s) _____

You are further notified that unless you remedy these violation(s) and come into compliance within thirty (30) days of receipt by you of this notice, our rental agreement shall terminate on the thirtieth (30th) day after receipt of you of this notice.

This violation(s) was material and that if a second material violation of any park or public health council rule or any health and safety code occurs within six (6) months after receipt by you of this notice, our rental agreement shall terminate immediately.

A defense available to termination of the rental agreement for two material violations of park, or public health council rules, or of health and safety codes, is that the park rule is unreasonable, or that the park or public health council rule, or health or safety code not being enforced against other manufactured home park residents, or that the two (2) violations were not willful and not committed in bad faith.

**NOTICE OF RESIDENT OR RESIDENTS OF
TERMINATION OF RENTAL AGREEMENT**
(Ohio Revised Code Section 3733.13)

To: _____

Date: _____

Lot No. _____ of _____

Dear Resident(s):

Pursuant to Ohio Revised Code Section 3733.13 you are hereby notified that our rental agreement is terminated effective upon receipt by you of this notice. On _____, 20____, you received a notice of violation of park rules, public health council, or state and local health and safety codes. It has come to our attention that a second material violation of the park rules, public health council rule; and/or of the health and safety code has been violated within six (6) months of your receiving the last notice of material violation in the following respects:

Grounds of Second Violation _____

Please leave immediately. If you do not leave an eviction action may be initiated against you.

Sincerely,

Park Manager

ACKNOWLEDGMENT OF RECEIPT

The undersigned hereby acknowledges receipt of the foregoing notice of immediate termination of rental agreement on the _____ day of _____, 20____.

Resident

NOTICE TO LEAVE THE PREMISES

Pursuant to O.R.C. § 1923.04

To _____ Tenant:

You will please notice that _____ want you on or before

_____, 2000 to leave the premises you now occupy,

and which you have rented of _____ situated and
(Landlord)

described as follows:

in _____, County of _____ and State of _____

Grounds: _____

YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS AS A TENANT, IT IS RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.

_____, 2000

Landlord's Address _____

Landlord

SAMPLE PRECIPE AND WAIVER FOR ORDINARY MAIL SERVICE

**IN THE MUNICIPAL COURT OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

PERFECT MOBILE HOME PARK :

Plaintiff, :

vs. :

RENTING RITA :
AND ALL OTHER OCCUPANTS :

Defendants. :

CASE NO.

Instructions to the Clerk

REQUEST AND INSTRUCTIONS FOR ORDINARY MAIL SERVICE

If service of process by certified mail is returned by the postal authorities with an endorsement of "Refused" or "Unclaimed" and if the certificate of mailing can be deemed complete not less than five (5) days before any scheduled hearing, the undersigned waives notice of the failure of service by the clerk and requests ordinary mail service in accordance with Civil Rule 4.6(C) or (D) and Civil Rule 4.6(E).

Date

Helpful Attorney (#0000000)
000 Advice Lane
Suite 111
Columbus, Ohio 43215
(614) 555-5555
Attorney for Plaintiff

SAMPLE EVICTION COMPLAINT FOR FAILURE TO PAY RENT

**IN THE MUNICIPAL COURT OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

PERFECT MOBILE HOME PARK	:	
0000 Park Road	:	
Columbus, Ohio 43215	:	CASE NO.
Plaintiff,	:	JUDGE:
vs.	:	F.E.D. COMPLAINT
	:	FIRST CAUSE ONLY
RENTING RITA	:	
and ALL OTHER OCCUPANTS	:	
0000 Park Road, Lot 100	:	
Columbus, Ohio 43215	:	
Defendants.	:	

**COMPLAINT IN FORCIBLE ENTRY AND DETAINER
FOR POSSESSION ONLY**

1. On or about July 3, 1999, Defendants, under a written lease agreement in which Perfect Mobile Home Park was the managing agent, entered into and are still in possession of the following described premises, situated in the City of Columbus, County of Franklin, State of Ohio, and known as 0000 Park Road, Lot Number 100, Columbus, Ohio 43215. A copy of the Application for Residency and Resident's Registration/Monthly Rental Agreement is attached hereto and incorporated herein as **Exhibit A.**
2. Plaintiff, Perfect Mobile Home Park, is and was at all times pertinent herein owner of the premises described in paragraph 1 herein above.
3. Plaintiff, Perfect Mobile Home Park, is the owner and duly authorized managing agent with full management rights including but not limited to a right of possession to

said premises superior to that of any tenant, to file and prosecute eviction complaints, and to pursue any and all causes of action that may arise with respect to the tenancy of Defendants and their obligations under the lease agreement and the law.

4. By the terms of the lease described, Defendant, as Residents, undertook and agreed to pay the total sum of \$207.00 per month, payable in advance, in full, on or before the first day of each month as rent or the occupation of the herein described said premises, plus a \$15.00 late charge for each month in which the rent is not paid on or before 1:00 p.m. of the 5th of the month, and to pay her monthly share of the water utility bills each month.

5. On October 1, 2000, there was due Plaintiff under the lease the sum of \$207.00 in rent for the month of October, plus \$79.00 for Defendants' outstanding water bill, which sums Plaintiff demanded but Defendants have not paid. Said non-payment constitutes an absolute breach of said lease agreement.

6. Defendants, All Other Occupants, are persons whose identity is unknown to Plaintiff, and who may be occupying the premises yet are not parties to the lease agreement, nor do they occupy the premises with any prior authorization or permission, express or implied of Plaintiff. Further, any right to possession of the premises which they may claim is strictly derivative to that of the named Defendants and subject to termination hereby.

7. Further, Plaintiff has suffered, and will continue to suffer, additional damages resulting from Defendant's default under the terms of the lease. Such damages include but are not limited to: attorneys fees, court costs, lost rent, lost income, lost profits, lost interest income, lost late charges, lost opportunities, potential mortgage interest

penalties, and the cost of employee wages and overhead attributable to the issuance of late notices and eviction notices to the Defendant. Plaintiff cannot be adequately compensated for Defendant's default described herein as may be more fully shown at trial.

8. Plaintiff, on October 13, 2000, served Defendant, by residence service, with a written NOTICE TO LEAVE PREMISES for them to vacate said premises no later than October 18, 2000. A copy of said notice is attached and incorporated herein as **Exhibit B**.

9. Defendants have failed to vacate the premises and do unlawfully and by force detain said premises from Plaintiff, the possession to which Plaintiff is entitled.

WHEREFORE, Plaintiff demands judgment for restitution of the premises as against all Defendants and that exclusive possession of the premises be returned to Plaintiff immediately.

Respectfully submitted,

Helpful Attorney (#0000000)
000 Advice Lane
Suite 111
Columbus, Ohio 43215
(614) 555-5555
Attorney for Plaintiff

Sample Rule Violation Complaint

**IN THE MUNICIPAL COURT OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

PERFECT MOBILE HOME PARK	:	
0000 Park Road	:	
Columbus, Ohio 43215	:	CASE NO.
Plaintiff,	:	JUDGE:
vs.	:	F.E.D. COMPLAINT
	:	FIRST CAUSE ONLY
RENTING RITA	:	
and ALL OTHER OCCUPANTS	:	
0000 Park Road, Lot 100	:	
Columbus, Ohio 43215	:	
Defendants.	:	

**COMPLAINT IN FORCIBLE ENTRY AND DETAINER
FOR POSSESSION ONLY**

1. Defendants, and all other occupants, reside in the Perfect Mobile Home Park under a lease agreement in which Perfect Mobile Home Park was the managing agent, entered into and are still in possession of the following described premises, situated in the City of Columbus, County of Franklin, State of Ohio, and known as 0000 Park Road, Lot Number 100, Columbus, Ohio 43215. A copy of the written Park Rules and Regulations is attached hereto and incorporated herein as **Exhibit A**.
2. Plaintiff, Perfect Mobile Home Park, is and was at all times pertinent herein owner of the premises described in paragraph 1 herein above.
3. Plaintiff, Perfect Mobile Home Park, is the owner and duly authorized managing agent with full management rights including but not limited to a right of possession to said premises superior to that of any tenant, to file and prosecute eviction complaints,

and to pursue any and all causes of action that may arise with respect to the tenancy of Defendants and their obligations under the lease agreement and the law.

4. Further Plaintiff has published, promulgated, and adopted written Rules and Regulations pursuant to Ohio Revised Code Section 3733.11(C), for Perfect Mobile Home Park and the property occupied by the Defendants situated in the City of Columbus, County of Franklin, State of Ohio, and known as 0000 Park Road, Lot Number 100, Columbus, Ohio 43215. Said Rules and Regulations were in and have been in effect throughout the pendency of Defendants residency within Perfect Mobile Home Park. See copy of the written Park Rules and Regulations attached hereto and incorporated herein as **Exhibit A**.

5. By the terms of the agreement of residency, Defendant , as a Resident of Perfect Mobile Home Park, undertook and agreed to abide by the Plaintiff's Park Rules and Regulations. Page 8 of the Park Rules and Regulations, Section 7, Paragraph 7.06, states as follows:

All pets, including cats, are to be kept inside the home. Outside the home, all pets, including cats, must be on a hand leash with the owner/family member present at all times. The handler must immediately clean up and remove all waste deposits.

6. As of the filing of this pleading, Defendants have exhibited behavior in violation of Rules and Regulations of Perfect Mobile Home Park, Section 7, Paragraph 7.06, Page 8, which require residents to keep their pets on a hand leash when outside the home and clean up waste deposits. Refusal to submit to Perfect Mobile Home Park's Rules and Regulations regarding pet waste removal constitutes an absolute breach of the rental agreement with Perfect Mobile Home Park.

7. On or about June 2, 2000, Defendant engaged in a material violation of the rules of the manufactured home park by not cleaning up animal waste from the yard. Renter violated Perfect Mobile Home Park's Community Rules and Ohio Revised Code 3733.101(A), which require that all residents of the community to clean up waste deposits from their pet.

8. Defendant has received numerous notices of violations for her failure to maintain her lot, which premises are under her control in accordance with Ohio law and the Rules and Regulations of the Perfect Mobile Home Park. Said failure to maintain her property includes her failure to maintain the lawn and landscape of the lot, her failure to maintain the exterior of the home in accordance with the Rules and Regulations of the Perfect Mobile Home Park and the community standards by which all homes must be maintained, her continued failure to remove debris from the lot, including garbage and animal waste. Defendant has received no less than a dozen notices of her failure to maintain her lot in accordance with the Rules and Regulations of the Perfect Mobile Home Park over the past six (6) months.

9. Defendant has also failed to control guests and invitees on her property and said gatherings of guests and/or invitees have continually disturbed the peaceful enjoyment of the community by the other residents of the community.

10. Defendants actions, for which Defendant has received numerous notices of violation, have resulted in Plaintiffs' inability to rent adjoining lots.

11. On May 23, 2000 the Ohio Department of Health issued a notice of the violation which is incorporated herein as **Exhibit B**.

12. As a result of Defendant's willful and material violations of said Park Rules and Regulations, Plaintiff is entitled to immediate termination of the parties' rental agreement, and present possession of Lot Number 100, pursuant to Ohio Revised Code Section 3733.13.

13. Plaintiff, on May 30, 2000, served Defendant , by residence service, pursuant to Ohio Revised Code Section 3733.13 of Defendant's material violation of the rules, provided with a copy of the Park Rules and Regulations, and informed that unless all rule violations were corrected within thirty (30) days of receipt of the notice, the rental agreement shall terminate. A copy of said notice is attached and incorporated herein as **Exhibit C**.

14. Despite said notice of the material violation of the rules, the Defendants have again refused to remove waste deposits. Defendants have failed to correct their numerous material violations as requested by Plaintiff resulting in continuing material violations of the Park Rules and Regulations. A Three Day Notice to Leave the Premises was served on the Defendants on June 5, 2000. See Notice of Resident or Residents of Termination of Rental Agreement herein as **Exhibit D**.

WHEREFORE, Plaintiff demands judgment for restitution of the premises as against all Defendants and that exclusive possession of the premises be returned to Plaintiff immediately.

Respectfully submitted,

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