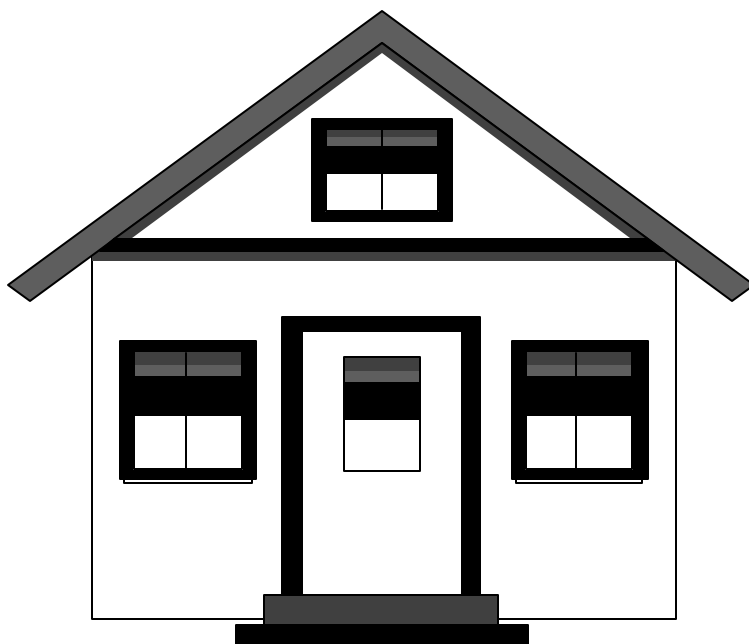




MidPenn Legal Services

LANDLORD/TENANT PACKET



MidPenn Legal Services

Office Locations

Administration

3540 North Progress Avenue
Suite 102
Harrisburg, PA 17110
717/541-8141
FAX 717/541-5601

Clearfield County

211½ East Locust Street
Clearfield, PA 16830
814/765-9645
800/326-9177 - Client Intake
FAX 814/765-1396

Service Offices

Bedford County

132 Lingenfelter Road
P.O. Box 202
Bedford, PA 15522
814/623-6189
800/326-9177 - Client Intake
FAX 814/623-6180

Dauphin and Perry Counties

213-A North Front Street
Harrisburg, PA 17101-2240
717/232-0581
800/932-0356
FAX 717/232-7821

Berks County

501 Washington Street
Reading, PA 19601
610/376-8656
800/299-6599
FAX 610/376-8650

Lancaster County

10 South Prince Street
Lancaster, PA 17603-3997
717/299-0971
800/732-0025
FAX 717/295-2328

Blair County

Penn Central Place
1107 Twelfth Street
Mezzanine Floor, Suite One
Altoona, PA 16601
814/943-8139
800/326-9177 - Client Intake
FAX 814/944-2640

Lebanon County

120 North Eighth Street
Lebanon, PA 17046
717/274-2834
FAX 717/274-0379

Centre, Huntingdon, Juniata and Mifflin Counties

2054 East College Avenue
State College, PA 16801
814/238-4958
800/326-9177
FAX 814/238-9504

Schuylkill County

100 West Laurel Boulevard
Pottsville, PA 17901-2538
570/628-3937
FAX 570/628-9697

York County

256 East Market Street
York, PA 17403-2058
717/848-3605
FAX 717/854-5431

INTRODUCTION

In Pennsylvania, a law governs the relationship between landlords and tenants. This law, passed by the Pennsylvania Legislature, says how a landlord/tenant situation will be handled. The Landlord/Tenant Act of 1958 regulates the interactions between landlords and tenants, including evictions. Landlords cannot take any action they wish to evict a tenant even if the tenant has not paid rent. In most instances, landlords must follow a set of procedures to evict a tenant.

If a landlord tries to use illegal eviction measures, like changing the locks or shutting off utilities, you can call the police. You should also contact your local legal services office. Legal services may be able to file for an injunction, which can prevent your immediate eviction. ***Again, if the landlord tries to illegally evict you by changing the locks or shutting off the utilities, you should contact your local legal services office.***

The law requires your landlord to give you a written notice of eviction. This notice will be a 10 or 15 day notice unless you have a written lease. The written lease may shorten the notice period or waive it altogether. After the notice period is over, the landlord must go to the District Justice and file a Landlord/Tenant Complaint. The District Justice's office will schedule a hearing in 7 to 15 days. The landlord may ask for possession of the property and money damages for unpaid rent and damage to the property.

The District Justice will make a decision either at the hearing or within 3 days after the hearing. If the District Justice grants a judgment for possession to the landlord, the landlord can seek an **Order for Possession** after 10 days. You will then be served with another 10 day notice. When that 10 day notice expires, you can legally be physically removed from the premises by a constable or a sheriff.

This packet is designed to help you help yourself in dealing with your landlord/tenant problems. It provides information on filing a suit against a landlord; discusses some defenses you might have against your landlord's claims; and gives the special rules for mobile home parks, security deposits, and procedures in District Justice Court.

You do not need a lawyer to appear in front of a District Justice. You may file legal papers and represent yourself. This system is called *pro se* (which is Latin for "appearing for oneself"). MidPenn Legal Services is unable to represent everyone who is financially eligible for legal services, so we have put together this packet of information and forms to help people to help themselves in Adams, Bedford, Berks, Blair, Centre, Clearfield, Cumberland, Dauphin, Fulton, Franklin, Huntingdon, Juniata, Lancaster, Lebanon, Mifflin, Perry, Schuylkill and York counties.

MIDPENN LEGAL SERVICES URGES ANYONE THINKING ABOUT USING THIS INFORMATION OR THESE FORMS TO READ EVERYTHING IN THIS PACKAGE BEFORE DOING ANYTHING. IF YOU ARE UNSURE ABOUT ANY OF THE INSTRUCTIONS, PLEASE CONTACT MIDPENN LEGAL SERVICES OR YOUR LAWYER BEFORE PROCEEDING.

MidPenn Legal Services, in providing the forms, instructions and information, is in no way agreeing or implying that it will represent individuals who use the enclosed information, nor is MidPenn Legal Services, responsible for misuse of the forms or errors that may be made in completing the forms. This information is accurate at the time of preparation. MidPenn Legal Services, assumes no responsibility for the total accuracy of this information other than on the date of preparation.

June 2001

Enclosed you will find:

A. MISCELLANEOUS INFORMATION

General Information on Security Deposits	1
General Information on the Warranty of Habitability	2
General Information on the Utility Service Tenants Rights Act	3
General Information on Notice Requirements	4
Mobile Home Park Tenants Rights Act	5
Defending an Eviction in District Court and Filing An Appeal	12
Suing in District Court	15

B. INSTRUCTIONS AND FORMS

Completing a Civil Complaint against a landlord	19
How to File a Petition to Proceed In Forma Pauperis (IFP)	20
Petition to Proceed In Forma Pauperis	22
Example Forms	27

SECTION A

SECURITY DEPOSITS

Most residential tenants pay a security deposit to their landlord. There is a law in Pennsylvania that regulates how much of a security deposit can be required, what the landlord must do with the security deposit, and when the security deposit should be returned. These rights cannot be taken away by the landlord.

The first year, the landlord is permitted to require a security deposit of up to two months' rent. In the second year that amount decreases to a maximum of one month's rent. A landlord should return to the tenant any amount over one month's rent that was originally charged. After two years, the landlord must put a security deposit of more than \$100.00 in an interest bearing bank account and inform the tenant of the name and address of the bank in which the account has been opened.

When a tenant moves, he/she must give the landlord written notice of his/her new address. If a tenant does not know exactly where he/she will be living then he/she can give the address of a friend or a family member. It is a good idea to send this to the landlord by certified mail and to keep a copy of the letter, the sender's receipt and the return receipt. It is also advisable to return the keys to the landlord on the day that the tenant moves out.

Then, if the tenant provided the written notice of a new address, the landlord has 30 days to give the tenant a written list of damages and return the deposit minus the amount claimed for actual damages to the unit. If the landlord does not do this, the landlord loses the right to keep the deposit and the right to sue the tenant for damages to the residence. This failure of the landlord also gives the tenant the right to sue the landlord for double the amount of the security deposit.

For instance, if the security deposit is \$300 and there are actual damages of \$50, the landlord must return \$250 to the tenant along with a list of the actual damages. The deposit and written list must be returned within 30 days of the date that the tenant provided his/her new address to the landlord. If the landlord does not return the deposit within that time, the tenant may sue the landlord for double the amount of the security deposit.

If a landlord does provide the list of damages and withholds part or all of the security deposit, the tenant must sue the landlord to recover those funds. In such cases, the landlord must prove the actual damages resulting from the tenant's residency.

REMEMBER: The landlord may refuse to return the security deposit without following the above steps if the tenant did not pay rent or otherwise broke the lease.

ALSO: Even if you do not provide the landlord with your new address at the time you move, you can still sue your landlord for the actual amount of the security deposit minus actual damages. In this situation, you will not be able to sue for twice the deposit, and the landlord can still sue you for damages to the rental unit.

WARRANTY OF HABITABILITY

When people offer an apartment or house for rent, they guarantee that it is safe and sanitary. They also guarantee that they will make the necessary repairs to keep it safe and sanitary during the lease term. This is called the warranty of habitability.

If there are problems, the tenant should try to work it out with the landlord in a fair manner. However, if it cannot be worked out, the tenant must take the following steps:

1. You must inform the landlord of the problem and what actions you intend to take if the problem is not fixed. This should be done in writing. It is a good idea to send the notice by certified mail to have proof that you told the landlord about the problems. You should keep a copy of the letter and your certified mail receipt.
2. You should give the landlord a reasonable time to fix the problem. What is a reasonable time depends on the seriousness of the problem and the individual situation. For example, 24 hours is probably a reasonable time to restore heat in the winter. If there is an infant in the home, 8 hours may be a reasonable time. Each set of circumstances is different.
3. You must be able to show that the repairs **were not made**. Photographs and witnesses are helpful. A housing code inspection is good if there is a housing code in force in the area and an inspector available.

If the landlord does not correct the problem within a reasonable time then you have several options:

1. Move without any further duty to pay rent.
2. Withhold rent and keep it until the problem is fixed. It is important to keep the rent money, as you may be required to pay some or all of it once the problem is resolved. If possible, the rent money should be placed in a separate bank account.
3. Make the repair and deduct the cost from the rent. Be sure to keep your receipts. You can only deduct repairs totaling no more than the amount of the rent due for the balance of the lease term. (For example, up to \$600.00 worth of repairs if monthly rent is \$200.00 and there are only three months left before the lease expires.)
4. Recover past rent paid by suing for damages in District Justice Court.
5. In some cases, a tenant can seek a court order requiring the landlord to do certain things to make the residence safe and sanitary.

Often, if a tenant tries to deal with the problem in the manner described above, the landlord will try to evict the tenant. If the tenant has given the landlord notice and kept copies of the notice, the District Justice may agree with the tenant and not give the landlord a judgment for possession. Even if the landlord is given the right to possession, the District Justice might decide not to give the landlord a money judgment for the amount of rent the landlord has requested.

UTILITY SERVICE TENANTS RIGHTS ACT

When a landlord pays for a utility service, a utility company (companies that provide electric water, natural gas or other utilities) and the landlord must take certain actions before terminating service to a tenant's residence.

The utility company must give the landlord at least 37 days notice that it will be turning off the service. The utility company also should notify the tenant of the proposed termination within 7 days of the notice to the landlord. The landlord must supply the utility company with the names and addresses of the tenants. If the landlord does not do this, the utility company must find another method of obtaining this information. A utility company cannot turn off a service without notifying the tenants.

The notice should be mailed to each tenant and should contain the following information:

1. the date the notice is given,
2. the date on or after which the service will be turned off,
3. how the tenant can keep the service,
4. the bill for the last 30 days of service, and
5. a telephone number at the utility company where they may call for the explanation of any rights.

The notice should have a bill for the previous 30 days of service attached. To prevent the termination of utility service, the tenant must pay this amount directly to the utility company by check or money order. The tenant has the right to deduct the amount of any direct payment to the utility company from any rent payments. The landlord cannot retaliate against the tenant for exercising his/her rights. The tenant cannot be evicted for taking this action. If the landlord does retaliate, the tenant can recover money damages.

The tenant can continue to pay for the service each month and maintain the service without putting the account in his/her name. The tenant also can choose to have the service put in his/her name.

If the proper notices are not given, a tenant should contact the Pennsylvania Office of Attorney General.

NOTICE REQUIREMENTS

The PA Landlord/Tenant Act says that in many situations, a landlord must give a tenant some sort of notice before the landlord can evict or sue the tenant. If there is a written lease, the lease will probably describe what notice is necessary. Many written leases waive the tenant's right to an eviction notice. If there is no written lease or the lease does not discuss notice, the law specifies what type of notice is required.

1. If the eviction is for failure to pay rent or is drug related, the landlord must give only 10 days notice.

If you are being evicted because it is the end of your lease or because of a breach of lease terms, the landlord must give the tenant 15 days notice. Remember, a written lease can waive or alter these notice requirements. If your lease is for more than a year and eviction is for breach of the lease or at the end of the lease, the notice period is 30 days.

2. The notice must be in writing. The notice must be delivered to you either by: (1) personal service, (2) leaving it at the principal building upon the premises, or (3) posting it conspicuously on the leased premises. Notice simply by mail is not legally sufficient.
3. The notice must give the reason for the eviction. If there is no written lease the reason for the eviction can be simply that the landlord has decided not to continue the lease and is ending at the close of the current thirty day period.
4. If the notice does not follow the law, the tenant can ask that any landlord/tenant complaint based on the faulty notice be dismissed. If the complaint is dismissed, the landlord must then give the tenant a proper notice and start over again. The landlord must then refile the landlord/tenant complaint.

If the notice does not meet the requirements of the law, a tenant may use that fact as a defense in any eviction action. However, remember that a lease can change the notice requirements. As a tenant, you can agree to some other kind of notice - - or no notice at all - - in a lease agreement. Read the lease you are being asked to sign very carefully.

MOBILE HOME PARK RIGHTS ACT

Pennsylvania has enacted the Mobile Home Park Rights Act (MHPRA) to protect individuals and families who both 1) **own** their mobile home and 2) rent space for that mobile home in a mobile home park. A mobile home park is any site, lot or tract of land, whether publicly or privately owned on which three or more mobile homes that are used for residences are located. The owner/operator of the mobile home park should post a copy of the MHPRA.

The MHPRA states that a mobile home park resident may be evicted for the following reasons only:

- (1) Non-payment of rent.
- (2) A second or additional violation of the rules of the mobile home park occurring within a six-month period.
- (3) If there is a change in use of the park land or part of the park lands.
- (4) Termination of the mobile home park.

The MHPRA details the steps owners or operators must take to **lawfully** evict a resident. First, they must notify the resident in writing of the reason they intend to evict the resident. This notice must be mailed to the resident by certified or by registered mail.

If the only reason for the notice is that the rent has not been paid, the notice must state that eviction proceedings will be started if the resident does not pay the overdue rent. Between **April 1** and **August 31**, the resident has 20 days from the date they receive the notice to pay back rent. However, if the notice is received between **September 1** and **March 31**, the resident has **30 days** to pay the back rent. If the rent is not paid by the time the notice expires, the owner will provide an eviction notice which states that the resident must vacate the mobile home park within 15 days (or 30 days if given between September 1 and March 31). Also, an additional nonpayment of rent occurring within 6 months of receiving notice may result in eviction proceedings.

If the reason given for the eviction is that the resident broke the lease or violated the mobile home park rules, then the notice needs to explain exactly what part of the lease was broken or which rule was violated. **Remember, a verbal agreement to pay rent to the owner/operator that is not in writing is still a lease.** If the owner/operator does not give the resident notice, then the owner/operator cannot take any action in court to evict the resident. However, if the mobile home resident receives a notice and then breaks the lease or violates a park rule within six months of the previous violation, the mobile home park owner has the right to serve the resident with a notice to quit. If the lease is month-to-month or for less than a year, the notice must be for 30 days. If the lease is for one year or more, the notice must be for three months. The owner/operator has 60 days from the second time the lease is broken or the rule violated in which to start eviction proceedings.

The MHPRA provides that the resident cannot be evicted if he/she can prove that the rule is not enforced against other residents who have also violated the rule. This is an important protection.

MOBILE HOME PARK EVICTIONS AT THE END OF LEASE TERM

Any tenant of a mobile home park who entered into a lease on or after August 31, 1996 **cannot be evicted simply because the lease expires**, so long as the tenant has obeyed all the park rules and has paid the rent.

If you are being evicted from a mobile home park, you should contact MidPenn Legal Services or another attorney immediately for legal help.

PARK RULES AND REGULATIONS

The owner/operator of the park may make fair and reasonable rules and regulations which must be followed by residents of the mobile home park. The rules must be reasonably related to the health or safety of the residents of the park or to the upkeep of the park. There is, however, no legal requirement that there be rules for the park.

If there is a written lease, any park rules or regulations must be included. Also, a copy of the rules must be delivered to all the residents of the park and posted in a noticeable place in the mobile home park.

If there is no written lease, the resident must be provided with a written copy of the rules and regulations before the owner/operator accepts any money for a deposit, rent, or any other fee.

Even if there are no written rules or regulations at the park, the owner/operator is required by law to provide each resident with a copy of the notice found on pages 9 and 10 of this packet. Residents should not have to ask for this notice. A resident should receive this notice from the owner/operator at the time that he/she enters into an oral or written lease agreement with the owner/operator.

MOBILE HOME EQUIPMENT AND ACCESSORIES

The Act gives the owner/operator the right to require that residents use a certain type of material or manner of installation. This includes the use of underskirting, awnings, porches, fences and other additions to the outside of a mobile home as well as for any tie-down equipment. The owners may not require the resident to buy such items from any particular supplier.

FEEES

The owner/operator must disclose, in writing, all rent that will be charged, all service charges, and any other fees or assessments that will be made **before** they accept any initial deposit, fee, or rent from a resident. If they do not, then they cannot sue the resident for the money in court or collect it from the resident. The owner can increase rent, service charges or other fees. The increase cannot be enforced in court by the owner/operator until thirty (30) days after a notice of the increases is posted in the park and mailed to the

residents.

RENT, HOWEVER, CANNOT BE INCREASED DURING THE TERM OF THE LEASE

Entrance or exit fees--When the owner/operator is not doing the actual moving of the mobile home, he/she cannot charge residents a fee for moving the mobile home. If the owner/operator is doing the actual moving, the fee charged cannot be any higher than the amount it costs him/her to do the moving. In other words, the owner/operator cannot make a profit from helping a resident move.

In addition, the owner/operator must refund the fee paid to install the home in the mobile home park if he/she tries to evict the resident within a year from the time the mobile home space was rented. This holds true unless the resident did not pay the rent or violated a condition of the lease. If the fee is not refunded when the resident removes the mobile home, the owner must pay the resident 3 times the amount of the fee. The owner must also pay any court costs and reasonable attorneys fees that the resident incurs in trying to collect the money owed to him/her.

If a resident wishes to install an electric or gas appliance in the mobile home, the owner/operator may not prevent it or prevent the resident from having the appliance serviced. The owner cannot charge a fee for the installation unless the owner is actually doing the work. The owner can only charge the cost of installing the appliance or the actual cost for the use of the appliance. For example, if the fuel or electricity used by the appliance was being paid for by the owner/operator, the owner can charge that amount to the resident.

IMPROVEMENT TO THE MOBILE HOME

The resident of the mobile home has the right to make improvements to the inside of his/her home without interference from the owner/operator of the park. Of course, improvements must be made according to the building codes and laws that apply to the area in which the park is located. A resident should contact the local government body in charge of these codes and laws before beginning any improvement.

VISITORS

A resident has the right to invite any social or business visitor he/she wishes to the mobile home without paying a fee if the guest stays overnight or for a longer period. **However**, if the visitor or guest stays for such a long time or so frequently stays as to be an additional resident, the owner/operator may increase the rent charged to an amount usually charged to other units having that number of residents.

SALE OF THE MOBILE HOME BY THE RESIDENT

The owner/operator of the park cannot prevent a resident from selling their mobile home. Any rule, regulation, or provision of the lease that attempts to restrict the right to sell cannot be enforced by the

owner/operator in court. If the owner/operator acts as a licensed mobile home agent, under a written agreement with the resident to help sell the home, they cannot charge any fee when it is sold. They do have the right to disapprove of the purchaser as a resident of that park if there is a good reason to do so. The Act does not specify what can be considered a good reason. Ultimately, that question would be for a court to decide in the case of a disagreement.

ENFORCEMENT OF THE RIGHTS GIVEN BY THE ACT

The Act gives any resident, or the owner/operator of the park, the right to take legal action in court when the law protecting that person is violated. The person bringing the suit has the right to be repaid for any damages caused by the violation of the Mobile Home Park Rights Act.

The Mobile Home Park Rights Act gives the Attorney General of Pennsylvania or the District Attorney of the county in which the resident lives the right to go to court. They can try to stop violations of the Act if the law enforcement official believes that going to court would be in the public's interest. Any suspected violation, existing or threatened, can be reported to the Attorney General of Pennsylvania or to the District Attorney of the county by the resident.

If a resident takes action to enforce the legal rights under the Act or another law and the owner/operator then tries to evict the resident or to make changes in the lease, it will be assumed by the court that the owner/operator did so to **retaliate** against the resident for insisting upon his/her legal rights. The owner's action then will be held unlawful and a violation of the Act unless the owner/operator proves in court that the action was **not** taken to retaliate against the resident.

NO WAIVER

Lastly, all the rights and responsibilities given to you as a resident, as well as those given to the owner/operator of the mobile home park, are binding and cannot be changed by any lease or agreement whether it is a written or an oral lease agreement. The owner/operator cannot change or lessen his/her duties under the Act through the terms of any lease. Such a change will not be recognized by the courts in Pennsylvania.

The law often changes. Each case is different. This explanation is meant to give you general information and not to give you specific legal advice about the rights and responsibilities of mobile home park tenants.

The Mobile Home Park Rights Act requires that the following information be posted in the park and be given to each resident upon entering into the lease. A mobile home park owner/operator may make other reasonable rules and regulations and these may be included with this required notice.

IMPORTANT NOTICE REQUIRED BY LAW

The rules stated below govern the terms of your lease or occupancy agreement with this mobile home park. The law requires these rules to be fair and reasonable.

You may continue to stay in this park as long as you pay your rent and other reasonable fees, service charges and assessments. You may continue to stay in this park if you abide by its rules. Entrance and exit fees may not be charged. Installation and removal fees may not be more than the actual cost to the mobile home park owner/operator for providing such service.

You may be evicted for any of the following reasons:

- (1) Nonpayment of rent,**
- (2) A second or additional violation of the rules of the mobile home park occurring within a six-month period,**
- (3) If there is a change in use of the park land or parts of the park land, or**
- (4) Termination of mobile home park.**

You have the right to purchase goods or services from a seller of your choice. The park owner shall not restrict this right.

If you want to sell your mobile home, the mobile home park owners cannot prevent the sale. The owners cannot claim any fee in connection with the sale, unless there is a separate written agreement. However, the mobile home park owner may reserve the right to approve the purchaser as a resident in the mobile home park.

EVICITION PROCEEDING

You shall only be evicted according to the following procedure:

- (1) A resident shall not be evicted by any self-help measure.¹**
- (2) Before the start of any eviction proceeding, the mobile home park owner shall notify you in writing of the particular breach or violation of the lease or park rules by certified or registered mail.**
 - (i) In the cases of nonpayment of rent, the notice shall state that an eviction proceeding may be started if the mobile home resident does not pay the overdue rent within 20 days from the date of service if the notice is given on or after April 1 and before September 1, and 30 days if it is given on or after September 1 and before April 1 or an additional nonpayment of rent occurring within 6 months of the giving of the notice may result in immediate eviction proceedings.**
 - (ii) If there is a breach of the lease or violation of the park rules, other than nonpayment of rent, the notice shall describe the particular breach or violation. No eviction action shall be started unless you have been notified as required by this section. On a second or additional violation or breach occurring within six months, the mobile home park owner may start eviction proceedings at any time within 60 days of the last violation or breach.**

In addition, no eviction proceeding for nonpayment of rent may be started against you until you have received notice by certified or registered mail. You have 20 days from the date of service to pay the overdue rent if the notice is given on or after April 1 and before September 1. You have 30 days from the date of service to pay the overdue rent if the notice is given on or after September 1 and before April 1. You are only required to receive one notice of overdue rent during any six-month period. If a second or additional violation occurs within six months from the date of the first notice, then eviction proceedings may be immediately started against you.

Signed By

The Owner/Operator

¹ Definition: Self-help is when a landlord or mobile home park owner/operator does things to keep a tenant out of the residence. For example, locking a person out of their home; changing the locks to a person's home; removing the windows; or turning off the utilities. If a landlord tries to use self-help measures the tenant should call the police and their local legal services office. (This footnote is not part of the actual Notice.)

HOW TO ENFORCE YOUR RIGHTS UNDER THE MOBILE HOME PARK RIGHTS ACT

The Attorney General of the Commonwealth of Pennsylvania or the District Attorney of the county where the mobile home park is located enforces the Mobile Home Park Rights Act. You also may bring a private cause of action. If your rights are violated, contact the State Bureau of Consumer Protection or your local District Attorney.

Here are the names and addresses of some people you should notify if you feel your rights have been violated or want to exercise your rights mentioned in this section:

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-3391

Public Protection Division
Bureau of Consumer Protection
14th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-7109 or (800)441-2555

District Attorney's Office

Bedford County

Huntingdon County District Attorney's Office
300 Penn Street
Huntingdon, PA 16652
(814) 643-3070

Blair County

Juniata County

Juniata County Courthouse
Bridge and Main Sts.
P.O. Box 212
Mifflintown, PA 17059
(717) 436-8991, Ext. 210

Centre County

Centre County Courthouse
Bellefonte, PA 16823
(814) 355-6735

Mifflin County

115 W. Market Street
Lewistown, PA 17044
(717) 248-9800

Clearfield County

Clearfield County Courthouse
231 E. Market Street
Clearfield, PA 16830
(814) 765-2641

Huntingdon County

DEFENDING AN EVICTION ACTION IN DISTRICT COURT AND FILING AN APPEAL

A landlord who wants to evict a tenant who has not moved in response to the landlord's eviction notice, must file an action with the District Justice. A tenant may defend or file counterclaims to the landlord's action.

WHAT IS A DISTRICT JUSTICE?

A District Justice is a locally elected official who decides some civil and criminal lawsuits including landlord/tenant matters. The District Justice used to be called a Magistrate or a Justice of the Peace.

SHOULD I ATTEND THE HEARING?

Yes, especially if you have a defense or a counterclaim to the landlord/tenant complaint. If there is a problem with the date the hearing is scheduled, you can ask that it be rescheduled. However, there is no guarantee the request will be granted. You should not assume it will be. You should be ready to proceed on the date scheduled by the District Justice.

WHAT IS A DEFENSE?

A defense is your argument about why the landlord should not be allowed to evict you or why you should not have to pay the money amount the landlord claims that you owe. You can talk about your defense at the hearing even if you did not file any papers yourself in response to the landlord's complaint. Some common defenses are that the landlord did not give adequate notice, that the warranty of habitability was violated, or that the landlord's story is not true.

WHAT IS A CROSS-COMPLAINT?

If you have a claim against the landlord, you may file a cross-complaint at the District Justice office. At any time before the actual hearing, you may go to the District Justice office and ask to file a cross-complaint. The District Justice will provide a form for you to fill out. The eviction hearing will then be postponed 15 days to give the landlord sufficient notice (at least five days) of the cross-complaint.

The District Justice will mail the cross-complaint to the landlord and consider both the original complaint and the cross-complaint at the hearing. A common cross-complaint is that the tenant has made significant improvements to the property and the landlord should repay the tenant for them.

WHAT HAPPENS AT THE HEARING?

At the hearing, the landlord will usually present testimony first. Both you and the landlord can testify and present other witnesses. You and your witnesses will testify after the landlord's side of the case has been presented.

The landlord will be given a chance to ask his/her witnesses some questions. The landlord also may question you and your witnesses. You may ask your witnesses and the landlord's witnesses questions. The District Justice may ask questions of all the witnesses or you or your landlord at any time.

MAY I BRING DOCUMENTS?

Yes, you should bring any documents that help prove your case. Any document important for the case must be presented at the hearing. The District Justice only considers documents presented at the hearing.

Remember, most times written statements from people who do not come to the hearing to testify will not be considered by the District Justice. But, the District Justice will consider a bill, estimate, receipt, or statement of account which was made in the regular course of business.

WHAT IF SOMEONE I WANT TO BE A WITNESS DOES NOT WANT TO COME TO THE HEARING?

You have the right to get subpoenas from the District Justice. A subpoena requires a witness to come to the hearing even if he/she does not want to come. The subpoena also can require the witness to bring documents needed to prove the case. Subpoenas should be obtained and served as soon as possible to be sure that the witnesses get them in time for the hearing.

MAY I OBJECT TO SOMETHING A WITNESS IS SAYING?

Yes. The most common objections are relevancy and hearsay.

1. You can object to a statement that does not have anything to do with the case and is therefore not relevant. Example: The landlord testifies that your father was arrested fifteen years ago for drunk driving. That is not relevant to the eviction proceeding.
2. You can also object to hearsay. Example: A witness testifies that Joe Smith said that his wife saw your son breaking a window. A witness can only testify to what he/she actually saw, not what someone else said they saw.

HOW SHOULD I PREPARE FOR MY CASE?

Presenting the case is a matter of common sense. You should make a written outline or check sheet to use at the hearing. You want to be sure you ask all the questions and present all the evidence you want the District Justice to consider.

WHEN WILL THE DISTRICT JUSTICE DECIDE?

After all the testimony, the District Justice will decide the case. The District Justice may decide right in court after all the evidence is taken. If not, the District Justice must decide within 3 days and send a copy of the decision to each party.

WHAT IF I DO NOT AGREE WITH THE DISTRICT JUSTICE'S DECISION?

You have the right to appeal a decision with which you do not agree. You should consult an attorney about appealing. **If you are appealing on the issue of possession of the leased premises (whether or not you should be evicted), you must file your appeal within 10 days of the decision.** The decision date is either the day of the hearing or, if it is a written decision, the date on the written decision. If you only want to appeal a judgment for money that has been entered against you, you have 30 days from the date of the decision to appeal.

CAN I STAY IN THE LEASED PREMISES DURING MY APPEAL?

If you think the District Justice has wrongly decided that possession should be granted to your landlord (which means that you will be evicted), you can appeal to the Court of Common Pleas. However, the appeal must be filed within 10 days. In order to be able to stay in the rented premises during the appeal, the judge or prothonotary must sign a *supersedeas*. A *supersedeas* is a kind of court order which allows for a “stay” (stop) of the eviction proceedings -- and it allows you to remain in the rented apartment or house during the time period of the appeal. In order to get a *supersedeas*, you must pay to the prothonotary 3 months’ rent or the rent actually in arrears as determined by the District Justice (whichever is less). This amount must be paid at the time that you file your appeal, within 10 days of the District Justice’s decision. During your appeal, you must also pay to the prothonotary your monthly rent every 30 days in order to continue the *supersedeas*.

If you think you want to appeal, you should contact MidPenn Legal Services or another attorney as soon as possible. You will need to have an attorney evaluate your case right away because of the short appeal deadline. In order to protect your legal rights, it is a good idea to talk with an attorney before your District Justice hearing if possible.

WHAT HAPPENS IF THERE IS NO APPEAL?

If the District Justice grants the landlord a judgment for possession by checking the box alongside the words, “Possession Granted,” you still have approximately 22 days to move. The landlord can request an Order for Possession from the District Justice on the 11th day after the judgment. Once that order is granted, the sheriff or constable will serve the order on you along with a 10 day notice to vacate. On or after the 11th day, the constable or sheriff can physically evict the tenants.

However, if the Notice of Judgment you receive has a check in the box alongside the words, “Possession granted if money judgment is not satisfied by time of eviction,” then you have the right to remain in your home if you pay to the landlord, constable or sheriff the amount of money you owe, as stated both in the Notice of Judgment and on the bottom of the Order for Possession, at any time before you are actually evicted. If you don't pay this amount, you can be forcibly evicted anytime after the date stated on the Order for Possession.

If the District Justice grants either the landlord or the tenant a money judgment, that party can go to the District Justice after 30 days and request an **order for execution**. The sheriff or constable will serve the order for execution and levy on the personal property of the person who owes the money. A levy means that the personal property will be listed to be sold at a sheriff's sale to satisfy the judgment.

SUING IN DISTRICT JUSTICE COURT

A tenant may sue the landlord in District Justice Court. The most common reasons for tenants to sue are that the landlord did not return a security deposit or refused to return personal property after the tenant moved. There are other reasons why a tenant may decide to sue a landlord, such as when the landlord has breached the warranty of habitability.

WHAT IS A DISTRICT JUSTICE?

A District Justice is a locally elected official who decides civil lawsuits including landlord/tenant matters. The District Justice used to be called a Magistrate or a Justice of the Peace.

DO I NEED AN ATTORNEY?

No. The system is designed to work without attorneys.

HOW MUCH CAN I SUE FOR?

The District Justices hear civil cases in which there is \$8,000.00 or less at issue.

WHERE SHOULD I FILE A DISTRICT JUSTICE ACTION?

You can bring the case in the district in which the party you are suing lives or regularly conducts business. Usually, this will be near where you live. This is not always the case. There are special rules for where the case must be filed if the defendant is an incorporated business or a government party.

The District Justice will have a copy of the rules. You should ask to see them and read them if you are unsure where to file.

HOW MUCH IS THE FILING FEE?

There is a filing fee of \$35 to \$60 to start the suit. The exact amount depends on the amounts for which you sue. If you are successful, the party you sue will pay the cost.

MAY THE FILING FEE BE WAIVED?

Yes, you would need to file a petition to proceed in forma pauperis (IFP). In forma pauperis simply means that you cannot pay the cost of filing the action.

There are forms available at the District Justice's office. The form requests information about your family size, income and expenses. The District Justice will decide based on the petition whether the fee should be waived within 5 days of filing the petition.

WHAT DO I FILE?

The paper you file to start the case is called a complaint. The District Justice will provide you with a form complaint. Write the names and addresses of the parties, how much money is at issue, and the dates of the agreement on the complaint. Describe the transaction or negligent conduct at issue. Also write a short statement of the facts that support your claim. This means write in detail the **reason(s)** why you are suing. For example:

"My landlord breached the warranty of habitability. The furnace in the building broke down. I had to pay to get it fixed because the landlord would not fix it. The defendant/landlord may file a counter suit against you. This does happen on many occasions and it is something to consider when you are trying to settle your case without going to court.

HOW DOES THE DEFENDANT FIND OUT ABOUT THE LAWSUIT?

After you file the complaint, the District Justice's office will serve it on the defendant, either personally or by mail. Because you pay for service, you might want to ask that it be done by mail because it is much cheaper (though service may not be as fast).

WHEN WILL THE HEARING BE SET?

The District Justice will set a date for the hearing and send a written notice of the date to you and to the defendant. The hearing must be set for not less than 12 days after and not more than 60 days after the complaint is filed. You have a right to ask that the hearing be postponed; however, there is no guarantee that your request will be granted. You should not assume that it will be. You should be ready to proceed on the date set by the District Justice.

WHAT HAPPENS AT THE HEARING?

At the hearing, you will be the first person to present your side of the story. All your witnesses, if any, will also testify for your side. The landlord may ask you or your witnesses questions. Then the landlord and his/her witnesses will testify. You have the right to ask them questions as well. The District Justice may also ask questions of all the witnesses at any time.

MAY I BRING DOCUMENTS?

Yes, you should bring any documents that help prove your case. Any document important for the case must be presented at the hearing. The District Justice will only consider documents presented at the hearing. Remember, most times written statements from people who do not come to the hearing to testify will not be considered by the District Justice, but the District Justice will consider a bill, estimate, or receipt (for example, a bill from a plumber or an estimate from the exterminator).

WHAT IF SOMEONE I WANT TO BE A WITNESS DOES NOT WANT TO COME TO THE HEARING?

You have the right to get subpoenas from the District Justice. A subpoena requires a witness to come to the hearing even if he/she does not want to come. The subpoena also can require the witness to bring documents needed to help you prove the case. Subpoenas should be obtained and served as soon as possible to be sure that the witnesses get them in time for the hearing.

MAY I OBJECT TO SOMETHING A WITNESS IS SAYING?

Yes. The most common objections are relevancy and hearsay.

1. You can object to a statement that does not have anything to do with the case and is, therefore, not relevant. Example: The landlord testifies that your father was arrested fifteen years ago for drunk driving. That is not relevant to the landlord/tenant issue.
2. You can also object to hearsay. Example: A witness testifies that Joe Smith said that his wife saw your son breaking a window. A witness can only testify to what he/she actually saw, not what someone else said they saw.

HOW SHOULD I PREPARE FOR MY CASE?

Presenting the case is a matter of common sense. You should make a written outline or check sheet to use at the hearing. You want to be sure to ask all the questions and present all the evidence you want the court to consider.

WHEN WILL THE DISTRICT JUSTICE MAKE A DECISION?

After all the testimony, the District Justice will decide the case. The District Justice may decide right in court after all the evidence is taken. If not, the District Justice must decide within 5 days and send a copy of the decision to each party.

WHAT IF I DO NOT AGREE WITH THE DISTRICT JUSTICE'S DECISION?

You have the right to appeal a decision you do not agree with. You should consult an attorney about appealing. The appeal must be filed within 30 days of the decision. The decision date is either the day of the hearing or, if it is a written decision, the date on the written decision.

WHAT IF NO APPEAL IS FILED?

If the District Justice grants a money judgment, and if the defendant does not pay you that amount, you can go to the District Justice after thirty days and request an order for execution. The sheriff or constable will serve the order for execution and levy on the personal property of the person who owes the money. That means that the personal property is listed to be sold at a sheriff's sale, and that the proceeds will be paid to you.

SECTION B

INSTRUCTIONS

COMPLETING A CIVIL COMPLAINT AGAINST A LANDLORD

PLEASE TYPE ALL COURT FORMS IF POSSIBLE. IF NECESSARY, PRINT NEATLY.

1. Fill in the plaintiff's name and address. Generally, if a tenant is suing a landlord, the tenant is the plaintiff.
2. Fill in the defendant's name and address.
3. Fill in the filing costs. There is a filing fee between \$35-\$60. Every jurisdiction is different, so ask at the District Justice's office for the amount of the fee.

*If you are filing a cross-complaint as a defendant in a landlord/tenant dispute, you do not have to pay a filing fee for your cross-complaint.
4. Enter the dollar amount of the damages you seek.
5. Describe the date, time, and place of the transaction and the negligent conduct at issue. Also, add a short statement of facts that support your claim
6. Print your name.
7. Sign your name. When you sign your name, you are swearing that what you have stated is true.
8. Leave the attorney information blank.
9. The District Justice will insert the hearing time and date on the form and the address of the magisterial office on the complaint form.

At the time the complaint is filed the District Justice shall set a hearing date which shall not be less than 12 or more than 60 days from the date the complaint is filed. (If a tenant files a cross-complaint to a landlord-tenant action, then the new hearing will be 7-15 days later.)

The District Justice will serve the defendant with a copy of the complaint form at least 10 days before the hearing. (5 days if this is a cross-complaint.)

HOW TO COMPLETE PETITION TO PROCEED IN FORMA PAUPERIS
(IFP)

PLEASE TYPE ALL COURT FORMS IF POSSIBLE. IF NECESSARY, PRINT NEATLY.

To begin any lawsuit you must pay a filing fee. However, it may be possible to have the filing fee waived if you can prove to the court that you cannot afford to pay the fee.

To do this, you must file a Petition to Proceed In Forma Pauperis (IFP). An IFP is a detailed list of your income and expenses, and says that you are unable to pay the costs associated with filing a lawsuit at this time. You must complete the IFP and file it at the District Justice office. The following are step-by-step instructions on how to fill out the IFP.

As in your Complaint, complete the caption with all the parties' legal names, the docket number and the type of case.

- (1) State whether you are the Plaintiff or Defendant.
 - 3(a) Fill in your name, address and social security number.
 - 3(b) If you are currently employed, print your employer's name, address, your monthly salary, and the type of work you do. If you are not currently employed, fill in the dates of your last employment (if none, write "none"), your wages at your last job and the type of work you did.
 - 3(c) List any other income you received within the last twelve (12) months. If any of the entries apply to you, fill in your average monthly income from that source. If an entry does not apply, simply write in "none".
 - 3(d) List any income which is received by other people in your household. If someone is not a member in your household, do not list their income here. If none of these apply, simply write in "none".
 - 3(e) List any property you own. If you do not have any of the type of property listed, simply write in "none".
 - 3(f) Fill in an average monthly figure where applicable and write "none" to a type of debt which does not apply to you. [Note: The "other" category is quite broad. You can use this category to list your average monthly electric, gas, oil, telephone and cable TV bills. You can also list miscellaneous expenses such as hospital bills, laundry, haircuts and food here. Make sure you list each expense and identify it.]

3(g) List the people who depend on you for support. If you have child(ren), list their names and ages here. Also list any other people dependant upon you for support and their relationship to you.

(4) and (5) are standard statements which need to be included in your petition as they appear.

When you have completed the affidavit portion of the IFP, sign and date it at the bottom.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF

: DOCKET NO.:

: DATE FILED:

:
:
:
:
:
:

vs.

PETITION TO PROCEED IN FORMA PAUPERIS

I hereby request that I be permitted to proceed in forma pauperis (without payment of the filing fee). In support of this I state the following:

1. I am the (Plaintiff)(Defendant) in the above matter and because of my financial condition am unable to pay the fees and costs of prosecuting or defending the action or proceeding.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the fees and costs is true and correct:

(a) Name: _____

Address: _____

Social Security No.: _____

(b) Employment--If you are presently employed, state

Employer: _____

Address: _____

Salary or wages per month: _____

Type of work: _____

--If you are presently unemployed, state: _____

Date of last employment: _____

Salary or wages per month: _____

Type of work: _____

c) Other income within the past twelve months

Business or profession: _____

Other self-employment: _____

Interest: _____

Dividends: _____

Pension and annuities: _____

Social Security benefits: _____

Support payments: _____

Disability payments: _____

Unemployment compensation and supplemental benefits: _____

Workman's compensation: _____

Public assistance: _____

Other: _____

(d) Other contributions to household support

Spouse's Name: _____

If your spouse is employed, state:

Employer: _____

Salary or wages per month: _____

Type of work: _____

Contributions from children: _____

Contributions from parents: _____

Other contributions: _____

(e) Property owned

Cash: _____

Checking account: _____

Savings account: _____

Certificates of deposit: _____

Real estate (including home): _____

Motor vehicle: Make: _____

Year: _____

Cost: \$ _____ Amount owed: _____

Stocks; bonds: _____

Other: _____

(f) Debts and obligations

Mortgage: _____

Rent: \$ _____

Loans: _____

Other: _____

(g) Persons dependent upon you for support:

Spouse's Name: _____

Children, if any:

Name

Age

Other persons:

<u>Name</u>	<u>Relationship</u>
_____	_____
_____	_____

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.

5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: _____
_____ Plaintiff/Defendant

Action by the District Justice: _____

Date: _____
_____ District Justice

IMPORTANT:

The following forms are not complete. They can not be used to file complaints.

You should obtain full and complete multiple-page forms at your local District Justice office. The District Justice may help you fill out the forms, if you ask.

Click to see an example of the Civil Complaint form that you would use to file a complaint against your landlord for money damages in District Justice court.

Click to see an sample of the Landlord/Tenant Complaint that your landlord would file at the District Justice office to initiate an eviction proceeding.