

CLEVELAND MUNICIPAL HOUSING COURT LOCAL RULES  
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## **SECTION 1 GENERAL**

### **A. SCOPE AND PURPOSE**

These rules prescribe the procedures to be followed in the Housing Division of the Cleveland Municipal Court (“Housing Court”) in order to insure uniformity and fairness in all operations of the Court.

### **B. MEDIA INQUIRIES**

All inquiries from the media shall be referred to the Director of Communications of the Housing Division.

### **C. APPLICABILITY**

Except where provided herein, the Housing Court will be governed by the Ohio Rules of Civil Procedure (“Civ.R.”) and Criminal Procedure (“Crim.R.”). All provisions of the Cleveland Municipal Court Rules of Practice and Procedure (“General Division Rules”) not in conflict with the rules herein are incorporated by reference and hereby made a part hereof.

### **D. HOUSING COURT SPECIALISTS**

The Court employs Housing Court Specialists (also known as Probation Officers). Specialists shall be knowledgeable about the laws and ordinances that govern the maintenance, repair, and rehabilitation of dwelling units within the City of Cleveland. The Specialist shall provide resources and information to landlords, tenants, and homeowners while acting as a liaison between The Court and the community. Specialists may mediate disputes during civil proceedings and assist with rent deposits, Temporary Restraining Orders and manage The Cleveland Housing Court Clinic. When there has been a plea or a guilty verdict in criminal court, Housing Court Specialists shall conduct a Pre-Sentence Investigation (PSI) and prepare a report to The Housing Court Judge. If sentenced to a period of community control (probation), the specialist shall provide supervision and keep The Court informed about the conduct, condition, and progress of all matters specified at sentencing.

### **E. CALCULATION OF TIME**

Unless otherwise indicated by these rules, when computing any period of time prescribed or allowed by these rules, the “days” specified shall be calendar days. The day from which the period begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday. When the number of days prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall not be included.

### **F. AMICUS CURIAE**

1. A person or entity seeking to participate as amicus curiae may only do so with leave of the Court.

2. In the motion for leave to participate as amicus curiae, the moving party shall demonstrate to the Court the public interest or particular legal matter that warrants participation in the suit. The motion for leave shall be served on all parties.

3. If a motion for leave to participate as amicus curiae is granted, the amicus may file, at the Court's discretion, a brief in support, a memorandum in opposition, or other such documents as the Court allows. In addition, at the Court's discretion, the amicus also may be afforded an opportunity to present an oral argument.

**G. COUNSEL OF RECORD - EMAIL AND OTHER REQUIRED INFORMATION; NOTICES OF APPEARANCE**

1. Pleadings, motions, or other documents of a party represented by counsel (attorney) shall be signed by at least one counsel of record in the counsel's individual name and must include his/her address, registration number, telephone number, business email address, and telefax number (if any).

2. Any business entity that appears before the Court must be represented by counsel.

3. In any criminal proceeding wherein the Defendant is a corporation or business entity, the attorney representing the Defendant must file an Authorization to Enter Plea on Behalf of a Corporation along with the Notice of Appearance.

4. Any counsel (attorney) retained to represent a litigant in the Housing Division of Cleveland Municipal Court shall file a Notice of Appearance.

5. Filing an answer or other responsive pleading does not constitute compliance with Section 1(G)(4), above.

6. Counsel who fail to file a Notice of Appearance may not be permitted to appear at any proceedings in the matter and will not receive judgment entries, orders, or other communications from the Court.

**H. NOTICE OF FILING OF CHANGE OF ADDRESS FORM**

Court rulings, notices or other correspondence will be sent to the address of record for parties/counsel. Parties/counsel shall immediately notify the court of an address change by completing and filing a Notice of Change of Address Form with the Clerk of Courts. Failure to update the Court of an address change pursuant to this Rule will not be good cause for a party/counsel missing a hearing.



## **I. SOLICITATION, DISRUPTIVE CONDUCT PROHIBITED ON COURT PREMISES**

1. Solicitation of business is prohibited on Court premises or adjacent areas of the Justice Center. Areas covered by this prohibition include, but are not limited to, Courtroom 3A, the 3A Bailiffs' Office and areas adjacent to those sites.

2. Behavior which impedes or disrupts the orderly conduct of the business of the Court is prohibited. This includes the placement of signs, placards, and banners. Picketing or parading is prohibited when such actions impede the orderly administration of justice.

3. Violations of this prohibition may result in removal from the area or Justice Center, citation for contempt of court, or other appropriate sanctions. Pursuant to Housing Court Local Rule 6(R)(7), a mover found to have violated this prohibition may be removed from the court-qualified mover's list and may be banned from inclusion on the list for a reasonable period of time.

4. The Sheriff or Bailiffs of the Justice Center shall enforce this policy, either by ejecting violators from the Justice Center or by causing them to appear before the Judge of this Court for a hearing and for the imposition of such punishment as deemed appropriate by the Court.

## **J. EX PARTE COMMUNICATIONS**

1. An "ex parte communication" is any direct or indirect communication on the substance of a pending case without the knowledge, presence, or consent of all parties involved in the matter.

2. Pursuant to rules governing judicial hearing officers, no one shall directly or indirectly initiate or solicit ex parte communications with the Judge, a Magistrate or other judicial officer.

3. If an ex parte communication in connection with any matter pending before the Judge or Magistrate is received in tangible form, the communication will be returned to the sender unread (viewed, etc.) indicating that such communications are prohibited.

4. If an ex parte communication in connection with any matter pending before the Judge or Magistrate is received in an intangible form (such as a voicemail recording), the Court may instruct the Court's reporter to transcribe the communication and cause the transcript to be filed as a communication in the case file. The Court may require the person initiating the communication to pay the cost of the transcription and to send a copy of the transcript to all parties in the matter.

## **K. MOTIONS TO WITHDRAW FROM REPRESENTATION**

1. Unless otherwise permitted by the Court at a scheduled hearing, permission to withdraw as counsel for any party must be sought from the Court, in the form of a written motion.

2. Motions by counsel to withdraw from representation must include:

- a. A statement of whether the withdrawal sought is mandatory or permissive;
- b. A brief statement of the facts forming the basis for the motion;
- c. A representation that counsel is returning or making reasonable efforts to return to the client all correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert reports and other items reasonably necessary to the representation; and
- d. A statement verifying that counsel has served the motion to withdraw upon her/his client and all other parties to the case.

## **L. FILINGS GENERALLY - ALTERATIONS**

1. Pursuant to R.C. 2303.09, the Clerk is obligated to "file together and carefully preserve . . . all papers delivered to him . . . in every action or proceeding." Once filed (date/time stamped), the substance of a pleading, entry or other document may not be altered by the Clerk or anyone else in any manner including correction fluid, correction tape or any other means.

2. The Court, in its discretion, may elect not to accept for approval and processing any Judgment Entry, Agreed Judgment Entry, or Order which has been altered in any manner including correction fluid, correction tape, or any other means.

## **M. FILINGS IN CONSOLIDATED MATTERS**

Where multiple cases are consolidated, parties must file a signed original of any pleading, document or other entry under each and every case number in which they wish the filing to be considered.

## **SECTION 2. CRIMINAL RULES**

### **A. CRIMINAL CASE ASSIGNMENT**

All criminal cases regarding violations of the City of Cleveland's Building, Housing, Fire, Health, Sanitation, Safety, Zoning, Sidewalk and Air Pollution Codes shall be assigned to the Housing Division for adjudication.

### **B. ALTERNATIVE CITATION FORM FOR MINOR MISDEMEANORS**

Pursuant to Crim.R. 4.1, the City may issue a citation for the offenses described in Schedule A, attached. The citation shall inform the defendant that, in lieu of appearing at the time and place stated, the defendant may, within that stated time, either mail in the waiver amount as indicated on the citation or appear at the office of the Clerk of Court (“Clerk”), sign the guilty plea and waiver of trial provision of the citation, and pay the total amount of the waiver fee and costs to the Clerk. The citation shall inform the defendant that he or she may be arrested if he or she fails to appear either at the Clerk’s office or at the time and place stated in the citation.

### **C. FILING OF CRIMINAL COMPLAINTS, CITATIONS - LIMITS**

1. To ensure accurate, expeditious processing of criminal complaints and citations, unless otherwise ordered by the Court, no more than fifty (50) criminal cases will be accepted for filing in the Housing Division on any one day.

2. To ensure effective management of the Court’s criminal caseload, the Clerk shall set no more than one hundred (100) new case filings for arraignment (first appearance) on any one day’s docket.

### **D. FILING OF CRIMINAL COMPLAINTS, CITATIONS - TIMING**

1. To permit the Clerk adequate time to identify and process all cases, all criminal complaints and citations must be filed with the Clerk at least twenty-eight (28) days prior to the scheduled hearing date.

2. The Clerk shall return to the City of Cleveland unprocessed any criminal complaints or citations filed fewer than twenty-eight (28) days prior to the scheduled hearing date.

### **E. SERVICE**

1. Criminal summons and complaints (other than minor misdemeanor citations), including an arraignment date, shall be served on defendants by certified mail from the Clerk (including any duly appointed deputy of the Clerk of Court). Bailiff service shall be attempted if the certified mail is returned unclaimed. If service has not been completed within eight (8) weeks, the Court may order a warrant to issue. The Court may shorten this period for good cause.

2. Minor misdemeanor citations, including an arraignment date, shall be served on defendants via certified mail by the City of Cleveland. Bailiff service shall be attempted if the certified mail is returned unclaimed. If service has not been completed within seven (7) weeks, the Court may order a warrant to issue. The Court may shorten this period for good cause.

3. To allow adequate time for the proof of service to reach the docket and be placed in the court file, the Clerk shall issue service of process in all criminal cases at least twenty-one (21) days prior to the Court date. If the Court sets a hearing to occur fewer than twenty-one (21) days in the future, and the Clerk is required to issue service on that case, the Clerk shall issue service within two business days of receipt of the entry from the Court setting the new court date.

4. The City of Cleveland's failure to provide a good service address may result in dismissal of the citation or complaint.

## **F. WARRANT AND SUMMONS**

1. Pursuant to Crim.R. 4 and 4.1, the Court may obtain a defendant's appearance either by serving a summons upon the defendant or by issuing a warrant for the defendant's arrest.

2. When a defendant is notified of an outstanding arrest warrant and voluntarily reports to the Court as a result of this notification, the Court shall schedule a new court date by preparing and journalizing a judgment entry. The judgment entry may also recall any outstanding arrest or capias warrant and require defendant to post bond, as determined by the Judge. The Court shall inform the defendant of the new court date when the warrant is recalled and any required bond has been posted.

## **G. ARRAIGNMENT**

1. Initially, all cases shall be set for arraignment within six (6) weeks of filing. At the arraignment the defendant will be required to present a photo ID, along with vital statistics, to the Court. Arraignments may be conducted by the Judge or a Housing Division Magistrate.

2. If a defendant corporation or business entity does not have counsel at the time of the arraignment hearing or its attorney has failed to file a Notice of Appearance and Authorization to Enter Plea pursuant to Local Rule 1(G)(3), unless otherwise ordered by the Court, the case will remain on the Court's Arraignment Docket for two hearings. If the defendant corporation or business entity fails to obtain legal representation or its attorney fails to file a Notice of Appearance and Authorization to Enter Plea by the date of the second arraignment hearing, then the case will be referred to Housing Court's Corporate Docket.

3. If a defendant corporation or business entity's case is referred to the Court's Corporate Docket, unless otherwise ordered by the Court, the case shall remain on the Corporate Docket until an attorney on Defendant's behalf files a Notice of Appearance and Authorization to Enter Plea.

## **H. BAIL**

LR.2

1. The Judge of the Housing Division shall set bail pursuant to the Schedule B, attached, and shall take into consideration the factors listed in Crim.R. 46(C).

2. Absent a court order on the case governing bail, the Clerk or duly authorized deputy clerk may require that defendants in criminal cases in the Housing Division post bond in accordance with Schedule B, attached.

3. A defendant charged with a misdemeanor offense before this Court may be admitted to bail, under Crim.R. 46, upon posting of the bail in cash, or upon the presentation of a valid major credit card or in such other form as accepted by the Clerk. Said major credit card must be one issued by a bank or other recognized and established institution and must have a credit balance sufficient to cover the bail amount.

4. The Clerk shall compile, and submit to the Court for approval, a list of the issuers whose credit cards are to be accepted for use in making bail under this section. The list shall include the names of the cards issued by each issuer.

5. No credit card transaction shall be permitted if said transaction will result in a service charge against the Clerk.

## **I. PRETRIAL CONFERENCES; VIDEO APPEARANCES**

1. The Court may order one or more pretrial conferences in accordance with Crim.R. 17.1.

2. Unless otherwise ordered, all parties and counsel must attend all scheduled pretrial conferences. Failure to appear for pretrial may be punished as contempt of court. The Court may instruct the parties to conduct an informal pretrial outside the presence of the Court.

3. The Court, upon motion by a party or on its own initiative, may permit one or more parties to appear for pretrial and status conferences via video conferencing. The motion of a party to appear via video conferencing must be made in writing. Approval for appearance via video conferencing may be conditioned upon posting of bond or other terms as determined by the Court. Appearance via video conferencing may also result in assessment of additional costs. Motions requesting leave to appear via video conference must be filed no later than fourteen (14) days prior to the pretrial or conference.

## **J. SETTLEMENT CONFERENCES**

1. In addition to any scheduled pretrial conferences, the Court may order a settlement conference, which shall be conducted by a conference manager, who may be the Judge, a magistrate, a judicial clerk or an alternative dispute resolution specialist. Parties should be

prepared at the settlement conference to make vigorous effort to achieve settlement. As part of the settlement conference process, the conference manager shall review with the respective parties the facts of the case, the strengths and weaknesses of the respective positions, and the consequences of proceeding to trial. Parties and counsel should allocate at least two (2) hours for the settlement conference.

2. All parties and counsel are required to attend the settlement conference. In addition, other concerned individuals or entities (e.g. neighbors, contractors, etc.) may be invited to attend.

## **K. MOTIONS**

1. All motions, except those made during trial or hearing, shall be made in writing. Pretrial motions shall be filed within the time limits established by the Ohio Rules of Criminal Procedure. Post judgment motions shall be filed and served not less than fourteen days before the time specified for the hearing. Where the continuance is sought because counsel is scheduled to appear in another case assigned for the same date and same time, the motion must include an attached copy of the conflicting assignment.

2. A party shall not file a motion prior to the entry of a plea, except those motions listed as exceptions in Crim.R. 12.

3. A copy of any motion filed with the Clerk must also be served on the prosecutor of the City of Cleveland Law Department, 601 Lakeside Avenue, Room 106, Cleveland, Ohio 44114. Failure to serve a copy, as indicated herein, shall constitute a failure to file and may be grounds for striking the motion.

4. Upon the filing of a pretrial motion, the Clerk shall time stamp and file the motion and shall forward the motion and the case file to the Housing Division within three (3) business days. Upon the filing of a post-judgment motion, the Clerk shall time stamp and file the motion and shall forward the motion and the case file to the Housing Division within five (5) business days.

5. To expedite its business, the Court may rule upon motions based upon the briefs, memoranda and supporting affidavits, if any, without oral hearing.

6. Pretrial motions shall be ruled on within one hundred twenty (120) days of filing. Post-judgment motions shall be ruled upon within forty-five (45) days of filing.

## **L. TRIAL/JURY TRIAL**

1. Every case not resolved at arraignment or pretrial shall be set for trial. Where the maximum sentence is One Hundred Fifty Dollars (\$150) or less, there is no right to a jury trial, and the case shall be tried by the Court. Where the right to a jury trial does exist, a written demand must be made. If a jury demand is timely filed, the case shall be set for jury trial.

2. Any demand for jury must be in accordance with the Ohio Rules of Criminal Procedure and must be filed with the Clerk no later than the later of (i) ten (10) days prior to the date set for trial OR (ii) on or before the third day after receipt of the notice of the date set for trial.

#### **M. SUBPOENAS ISSUED BY THE COURT**

1. The Court may issue a subpoena for a non-party witness as needed to obtain information necessary to the administration of the criminal case.

2. All subpoenas issued by the Court must be time-stamped and docketed by the Clerk of Courts upon issuance.

3. All subpoena returns by the Bailiffs must be docketed within one week of filing by the Clerk of Courts.

#### **N. SENTENCING**

Sentencing hearings shall be set within forty-five (45) days from finding. For good cause shown, this period may be extended to one hundred eighty (180) days.

#### **O. TIME TO PAY**

1. At the time of sentencing and after sentencing, when a fine is imposed for a misdemeanor, the Court, in its discretion, may permit the payment of all or any portion of the fine in installments, upon such terms as the Court considers just. The Court may enlist the services of the Clerk in arranging a payment plan; however, under no circumstances may the payment plan exceed two (2) years.

2. Failure to comply with the payment plan may subject the defendant to sanctions, including but not limited to, revocation of the payment plan, punishment for contempt of court, and/or conversion of the fine and costs to a civil judgment as allowed by Ohio Revised Code (“R.C.”) 2929.18.

#### **P. SELECTIVE INTERVENTION PROGRAM**

1. The Housing Division of the Cleveland Municipal Court has established a Selective Intervention Program (“SIP”) to assist eligible and approved criminal defendants in

correcting the City code violations, which have brought them before the Court. Upon referral by the Judge, a housing court specialist shall screen a defendant being considered for participation in the SIP program.

2. All persons referred to the SIP shall be assessed a non-refundable administrative fee of twenty-five dollars (\$25.00). The Court shall render an explanation of the program and the fee to the defendant prior to referral for screening.

3. For good cause shown, the Court may waive the SIP fee if the Judge is satisfied that the defendant is indigent or otherwise unable to pay.

4. Pursuant to R.C. 1901.14, the SIP administrative fee shall be paid to the Clerk of the Cleveland Municipal Court, who shall pay the fee directly to the Treasurer of the City of Cleveland.

5. The Clerk shall accept the SIP fee in cash, personal check, certified check, money order or upon a valid major credit card. Said major credit card must be one issued by a bank or other recognized and established institution and must have a credit balance sufficient to cover the amount of the fee.

6. If the defendant is found not eligible or removed from the SIP docket, the case shall be returned to the Judge's docket, and the defendant shall be given a new court date by the Court.

7. Upon successful completion of the SIP, the Court may grant the City of Cleveland's motion to nolle and dismiss the criminal case.

#### **Q. TIME SCHEDULE FOR DELETION OF WARRANTS**

Each month the Clerk shall prepare a docket (print out) of cases wherein a summons or warrant has not been executed within the guidelines established by this Rule. The Judge of the Housing Division shall review these cases and may order such summons and warrants withdrawn, and the cases closed, when it does not appear that justice may be served by allowing them to remain active. The time guidelines are as follows:

##### Prejudgment Misdemeanor Warrants

Minor Misdemeanor Warrants	2 years
Second, Third and Fourth Degree Misdemeanor Warrants	2 years
First Degree Misdemeanor Warrants	5 years
<u>All Post-Judgment Misdemeanor Warrants</u>	5 years

#### **R. SEARCH WARRANTS**



1. Search warrants signed by and returned to the Judge of the Housing Division shall be maintained on file in the office of the Clerk.

2. The Clerk shall maintain an index of the search warrants. Warrants shall be indexed by the date of return.

3. Warrants and all accompanying documents shall be retained by the Clerk for five (5) years. Warrants shall be maintained in the Clerk's office for two (2) years. Warrants more than two (2) years old but less than five (5) years old may be held by the Clerk in off-site storage.

4. Warrants and all accompanying documents may be reviewed upon request. The request to review a warrant and accompanying documents must be made in writing, to the Clerk. The individual requesting review of a warrant must provide the Clerk with the address of the premises and the approximate date of return of the warrant.

#### **S. GENERAL COMMUNITY CONTROL SANCTIONS (also called GENERAL PROBATION REQUIREMENTS)**

1. The Court may sentence an offender to any community control sanctions authorized by R.C. §2929, the requirements of which are commonly known as probation requirements.

2. The Court has established certain community control sanctions to apply in criminal cases in the Housing Court. These sanctions shall be called the "General Community Control Sanctions" or "General Probation Requirements" of the Housing Division of the Cleveland Municipal Court and are set forth in the Appendix to these Local Rules.

3. The Court may modify the General Probation Requirements in a specific case or may impose on an offender specific community control sanctions (also called specific probation requirements) in addition to the General Probation Requirements.

4. Publication of these General Probation Requirements in these Rules serves to notify defendants who are charged in criminal cases of the community control sanctions that the Court may impose.

5. If the Court, after notice and hearing, determines that a defendant has violated Community Control Sanctions, the Court may extend the period of Community Control, impose additional Community Control Sanctions, execute upon any portion of the defendant's sentence previously suspended, or re-sentence the defendant on the original charges upon which the defendant was convicted.

6. While a defendant is on Community Control, the Court may order the defendant to refrain from selling, transferring or gifting all properties that defendant owns in the City of Cleveland pursuant to R.C. 2929.25.

## **SECTION 3 CIVIL RULES**

### **A. CIVIL CASE ASSIGNMENT**

All eviction cases (claims for possession, also known as the "First Cause" or forcible entry and detainer cases), rent deposit actions, applications to remedy conditions, security deposit claims, receivership cases, foreclosures, temporary restraining orders, injunctions, landlord-tenant cases, land contract and quiet title actions and all other actions brought in the Cleveland Municipal Court under R.C. Chapters 1923, 3733 and 5321 shall be assigned to the Housing Division for adjudication.

### **B. DOCUMENTS TO BE FILED WITH COMPLAINT**

1. *Evidence of status by Domestic, Foreign and Fictitious Entities.* Complaints brought by a domestic or foreign business entity, including, but not limited to a corporation, nonprofit corporation, professional corporation, limited liability company, limited partnership, limited liability partnership, or fictitious entity (including "doing business as" names), must include, at the time of filing, documentary evidence of the entity and owner's good standing, active registration or active license with the Ohio Secretary of State. Failure to include sufficient documentation may result in sanctions up to the dismissal of the complaint without prejudice.

2. *Evidence of current ownership.* When filing an eviction complaint, plaintiff must attach proof of current ownership of the premises that is the subject of the action. Proof of current ownership may include, but is not limited to, a print-out of the "General Information" tab for the premises from the Cuyahoga County Auditor's ("Auditor") website. Failure to do so may result in sanctions, up to the dismissal of the complaint with prejudice.

3. *Certification Regarding Plaintiff's Criminal Housing Cases.*

a. All plaintiffs (individuals and business entities) filing cases in the Cleveland Housing Court must certify at filing that they, nor the actual owner, have criminal cases in this Court in which they are the defendant and have (i) failed to appear for a scheduled hearing (and have not corrected that failure) OR (ii) failed to make payments within the time required in the criminal case. All such failures of either Plaintiff or the owner are to be resolved prior to filing.

b. False or inaccurate certifications may result in sanctions, including, but not limited to, dismissal of the complaint, a continuance to allow Plaintiff to appear for and resolve the outstanding criminal matter, or, where warranted, prosecution for perjury.

4. *Evidence of Current Cleveland Residential Rental Registration Status.*

a. Complaints in eviction must include, at the time of filing, documentary evidence from the City of Cleveland Department of Building and Housing verifying the active registration of the premises with the City's Rental Registration Program, or an exemption thereto. See CCO Chapter 365.

b. CCO §365.01(a) states that:

“... a rental unit is defined as any part of a building being used, designed or intended to be used as an individual’s private residence. A rental unit includes a unit occupied by one (1) or more persons regardless of whether the occupant pays rent or provides anything else of value to the titled owner in consideration for occupying the structure. A unit is not considered a rental unit if the titled owner is one (1) of the occupants.”

5. Failure to include sufficient documentation may result in sanctions, up to the dismissal of the complaint without prejudice.

**C. EVIDENCE OF STATUS TO BE FILED WITH COMPLAINT BY DOMESTIC, FOREIGN AND FICTITIOUS ENTITIES – PLAINTIFF FILING MORE THAN FIFTY CASES ANNUALLY**

1. Domestic, foreign and/or fictitious entities who file annually fifty or more eviction complaints in the Cleveland Municipal Court, Housing Division, as an alternative to attaching proof of good standing or registration to each complaint, may apply with the Court for an order acknowledging plaintiff’s good standing, active registration, or active license from the Ohio Secretary of State.

2. The application shall be made in writing and shall be accompanied by 1) the proof of good standing, active registration, or active license; 2) an averment that the plaintiff has filed more than fifty eviction actions in the previous twelve month period; and 3) an affirmation that the plaintiff will notify the Court promptly if the plaintiff’s standing, registration, or license status changes.

3. Applicants who believe they are exempt from registration or licensing requirements as a matter of law may file, in the alternative, an application for exemption from this rule, providing the Court with all relevant evidence and authority.

4. Applicant shall notify the Court promptly in writing if the entity's standing, registration, or license status changes.

5. There shall be no filing fee for the application.

6. Orders granting acknowledgement shall be signed by the Judge of the Housing Division. The Clerk shall retain the original application/motion and shall record the acknowledgments in a special journal for those orders.

7. Once granted, the acknowledgement shall remain in effect for one year from the date of journalization.

8. The orders of acknowledgement are a courtesy extended by the Cleveland Municipal Court's Housing Division. The Court may vacate the order if the Court learns that the applicant has provided false information in the Application or the entity's status has changed. These issues may be raised on the Court's own motion or upon the motion of a party.

#### **D. SECURITY FOR COSTS**

1. No pleading or motion shall be accepted for filing by the Clerk unless there first shall be deposited the sum of not less than the amount specified by the Clerk as security for costs, unless otherwise ordered by the Court or exempted by law. Those persons unable to post the required security for costs may be excused from the prepayment of costs upon filing a completed Affidavit of Indigency Form approved by the Judge of the Housing Division or a Housing Division Magistrate so empowered by the Judge of the Housing Division. The Court reserves the right to revoke a party's indigent status. If such status is revoked, the party shall be required to deposit security for costs as provided herein.

2. Poverty affidavits submitted in conjunction with a jury demand, motion or pleading filed with the Legal Aid Society as counsel of record do not have to be approved by the Court. Poverty affidavits prepared in accordance with Legal Aid Society financial guidelines, and bearing the endorsement "Legal Aid Volunteer Lawyers Program Housing Project," when filed in conjunction with a jury demand, motion or pleading filed by counsel participating in that Program, do not have to be approved by the Court.

3. The Court may at any time require additional information and/or a hearing to determine the validity of the poverty affidavit.

## **E. SERVICE OF SUMMONS**

1. All summonses shall be served in accordance with the Ohio Rules of Civil Procedure. If service of the summons is not obtained within six (6) months from the date of filing, the Court or Clerk shall notify the party/counsel that the case shall be dismissed in ten (10) days unless good cause is shown to the contrary.

2. Where bailiff service is requested in an eviction, so that the bailiffs may gain entrance through any common doors, written instructions must include a telephone number for (1) an on-site property manager, (2) a custodian or (3) where there is no contact person available on the premises, the plaintiff.

## **F. CONTINUANCES**

1. No party shall be granted a continuance of a trial, a pretrial, or a hearing without a written motion, complying with Rules 3(G), et seq. below, from the party/counsel stating the reason the continuance is sought, filed at least seven (7) days in advance, unless otherwise approved by the Court.

2. If the Plaintiff requests a continuance on the day of trial or hearing, the continuance shall be scheduled no less than ten days from the original hearing date, or as otherwise ordered by the Court.

## **G. MOTIONS AND FILINGS SUBSEQUENT TO THE COMPLAINT**

1. All motions, other than those made at trial or hearing, shall be in writing. They must be typewritten or legibly hand-written.

2. Written motions shall comply fully with the Ohio Rules of Civil Procedure, and shall consist of the following:

- a. The motion, which includes:
  - i. a statement of the relief or order sought;
  - ii. a statement of the grounds for the motion;
  - iii. where a continuance is sought because counsel is scheduled to appear in another case on the same date and at the same time, an attached copy of the conflicting assignment; and
  - iv. the signature of the moving party/moving party's counsel per General Division Rule 3.01.
- b. A brief in support of the motion, which includes:
  - i. a concise statement of pertinent facts;
  - ii. a description of the relief or order sought;

- iii. applicable statutes, ordinances, rules, regulations, or the like (lengthy extracts may be attached as an appendix); and
- iv. arguments establishing legal grounds for the motion along with case citations, statutes and other authorities relied upon.
- c. Supporting documentary evidence, which may include affidavits, or travel itinerary [personal information should be redacted] for those parties who will be unavailable due to travel plans or other conflicts.
- d. A certificate of service meeting the requirements of the Ohio Rules of Civil Procedure. The certificate of service shall:
  - i. be endorsed on the motion or other pleading or filed as a separate document; and
  - ii. affirmatively show the exact date and method of service.

3. All motions and filings seeking to alter a move-out date (i.e. Request for Forthwith, Motion for Stay, Motion for Relief from Eviction Judgment) or seeking an ex parte order (i.e. Temporary Restraining Orders) or any other order of an emergency nature must be accompanied by the physical case file to allow immediate entry of the filing into the Clerk's computer system and to assist in prompt case management.

4. Opposition Memorandum, Contents and Service.

a. A party opposing a written motion may file with the Clerk, and serve on the opposing party/counsel, an opposition memorandum within seven (7) days from the date the motion to which the opposition is directed, was served, unless otherwise ordered by the Court. Failure to serve and file an opposition memorandum or brief may be construed by the Court as an admission that the moving party's motion should be granted.

b. A memorandum in opposition shall include:

- i. a concise statement of facts or statement of agreement with moving party's facts;
- ii. applicable statutes, ordinance, rules, regulations or the like (lengthy extracts may be attached as an appendix);
- iii. argument establishing legal and factual grounds for denying the motion containing case citation, statutes and other authorities relied upon; and
- iv. opposing documentary evidence, if any.
- v. Certificate of service pursuant to Civ.R. 5. See Rule 3(G)(2) above.

5. A copy of any motion filed with the Clerk must also be served contemporaneously on the opposing party/counsel. Failure to deliver a copy of the motion, with a completed service clause, as indicated shall constitute a failure to file and may be grounds for striking the motion.

6. Delivery of physical copy of motions impacting move-out, seeking stay of execution of a judgment (not a move-out), requesting ex parte order, or filed on date of hearing.

a. A physical copy of any motion filed with the Clerk **seeking to alter a move-out date (i.e. Request for Forthwith, Motion for Stay, Motion for Relief from Eviction Judgment) must be contemporaneously delivered by the filing party to (i) the Chief Magistrate of the Housing Division (13<sup>th</sup> Floor of the Justice Center) AND (ii) the Chief Bailiff of the Housing Division (3A Bailiff's Office in the Justice Center).** Failure to deliver copies of the motion as indicated may constitute a failure to file and may be grounds for striking the motion.

b. A physical copy of any motion filed with the Clerk seeking a stay of execution of a judgment, **but not a move-out**, or requesting an ex parte order must also be contemporaneously delivered by the filing party to the Chief Magistrate of the Housing Division (13<sup>th</sup> Floor of the Justice Center). Failure to deliver copies of the motion as indicated may constitute a failure to file and may be grounds for striking the motion.

c. A physical copy of any motion **filed with the Clerk on the date of a hearing** must also be contemporaneously delivered by the filing party to the Chief Magistrate of the Housing Division (13<sup>th</sup> Floor of the Justice Center). Failure to deliver copies of the motion as indicated may constitute a failure to file and may be grounds for striking the motion.

7. *Timely Ruling.* All motions, except motions to stay a move-out, shall be ruled upon within ninety (90) days from filing, unless the time frame for such ruling is otherwise extended by the Court. Due to their immediacy, motions to stay a move-out may be ruled upon in less than ten (10) days. See Rule 4(C)3. The Court will consider responses, if any, filed by the opposing party/counsel.

8. *Oral Argument.* Whenever possible, motions shall be determined without oral argument. Oral hearings will be permitted where: (1) disposition of the motion turns upon a disputed issue of fact; (2) disposition of the motion turns upon evidence which cannot be presented in documentary form; or (3) for other good cause shown.

## H. REQUESTS FOR BENCH TRIAL

1. Any party requesting a bench trial must file a written Motion for Bench Trial. The motion must be filed so as to allow three (3) full business days, excluding weekends and legal holidays, to elapse before the time fixed for the original hearing or the time to which the hearing is continued. For example, assuming no intervening holidays:

<u>Original Hearing Day</u>	<u>Request/Demand must be filed by</u>
Monday	Preceding Tuesday
Tuesday	Preceding Wednesday
Wednesday	Preceding Thursday
Thursday	Preceding Friday
Friday	Preceding Monday

2. The party seeking the bench trial must state the basis for the motion with specificity. Among the factors the Court may consider when ruling on a motion for a bench trial are (1) the complexity of the legal and/or factual issues presented, (2) the time needed to conduct discovery, (3) the time needed for presentation of evidence at trial, (4) burden on the parties if the motion is granted or denied and (5) any other factors which the Court deems relevant. The party filing the motion must, in the motion or accompanying brief, discuss with respect to the specific case, the legal or factual issues presented, discovery needed, expected length of trial, etc. The motion for bench trial must be served upon the opposing party/counsel pursuant to the above requirements.

3. In the event the motion for bench trial is granted, the matter shall be set for pretrial and removed from the general call docket.

## I. JURY DEMANDS

1. The demand for a jury must be in writing by separate instrument or by prominent endorsement in the caption of a pleading. A deposit in the amount specified by the Clerk must be made by the party demanding the jury at the time the demand is made. Failure to make the required deposit shall constitute a failure to file the jury demand. A jury demand may be made in conjunction with an approved poverty affidavit. See Rule 3(D).

2. If the jury demand is made by separate instrument, a copy must be served upon the opposing party/counsel and the act of such service must be endorsed thereon.

3. If a timely jury demand is filed, the matter shall be set for pretrial and removed from the general call docket.

4. **Timely Filing.** Any demand for jury shall be in accordance with the Ohio Rules of Civil Procedure except in eviction actions where the demand must be made so as to allow three



(3) full business days, excluding weekends and legal holidays, to elapse before the time fixed for the original call or the time to which the call is extended. See Rule 3(H) regarding calculation of three (3) full business days.

5. Waiver of Jury Demand. When a jury has been demanded as herein provided and the demanding party subsequently wishes to waive the demand, unless the demand is waived in writing by all parties not less than three (3) full business days prior to the date set for trial, the party who requested the jury and waives it shall pay all jury fees and expenses incurred as a result of such jury demand, including the jury deposit, unless otherwise ordered by the Court. The Court shall indicate specifically if the jury expenses are to be charged indicating the party, the number of jurors, the number of alternate jurors and the number of days.

## **J. RECORDS OF HEARINGS AND PRIVATE REPORTERS**

1. Except where required by law, the Court does not utilize a court reporter to transcribe proceedings in civil matters.

2. Any party or his representative may retain the service of a private reporter to keep a verbatim record of any scheduled hearing. Upon written motion made at least three (3) days prior to the taking of testimony at the hearing, a private reporter so retained shall be designated by the Court as the official court reporter for the purpose of recording the proceedings at such hearing. A private reporter also may be designated as the official reporter for a hearing by agreement of the parties.

3. An “audio only” digital recording is made of eviction hearings. Audio only digital recordings of other hearings also may be made. Parties may file a written request for such a recording to be made no later than three (3) days prior to the scheduled hearing in cases where a recording is not required by law. A copy of the recording may be obtained by completing a request form (available from the Housing Division Bailiff’s office or from the Court Project Coordinator) and providing a blank disc with the request form. “Audio only” recordings, or a transcript of such a recording, may not be sufficient for purposes of an appeal. Parties are urged to consult the Rules of Appellate Procedure.

4. Digital master recordings shall be erased two (2) years from the date of the recording.

## **K. CASE MANAGEMENT**

1. Cases may be removed from the general call docket and set for pretrial conference. At the conference, the Court may act upon service, leaves to plead, discovery schedules, dates for hearings, etc. as needed. A final pretrial may be ordered where the case presents complex issues of fact and/or law.

2. If settlement is not reached, then the Court shall act on any other matters which come before it at that time and efforts shall be made to narrow legal issues, to reach stipulations as to facts in controversy and, in general, to shorten the time and expense of trial. The Court may enter a case management order regarding stipulations, admissions and other matters.

#### **L. REMOVAL FROM GENERAL CALL DOCKET**

1. The eviction hearing shall be removed from the general call docket and set for pretrial conference where a timely jury demand is filed prior to the eviction hearing or where a motion for bench trial is timely filed and granted prior to the eviction hearing.

2. Claims for money filed in conjunction with an eviction and separate claims for money damages shall be removed from the general call docket and set for pretrial conference where a timely jury demand, answer or counterclaim is filed prior to the hearing on the money claims.

3. Other cases may be removed from the general call docket and set for pretrial conference at the discretion of the Court. The Court may set a pretrial conference where it determines that such a conference may be useful in achieving an amicable settlement or in more fully preparing the matter for trial.

4. Where the plaintiff is identified as the subject of an open warrant or capias in a Housing Division criminal case, the plaintiff's cases may be removed from the regularly scheduled docket and rescheduled to a separate Warrant Docket. Plaintiffs whose cases are removed to the Warrant Docket must enter an appearance and plea in their criminal case prior to their scheduled appearance in the eviction case on the Warrant Docket.

#### **M. PRETRIAL CONFERENCE**

1. At the Court's option, pretrial conferences may be conducted by the Judge, magistrate, staff attorney, or other member of the Court's staff. The conference shall be conducted in person, unless otherwise ordered by the Court.

2. Counsel attending the conference must have full authority to (1) enter into a case management order, (2) stipulate on evidence and admissions and (3) enter into a settlement agreement. Counsel should be prepared to present the legal theory of the case as well.

3. In addition to counsel, all parties are required to attend the conference, unless otherwise ordered by the Court.

4. If the parties or their counsel fail to attend a scheduled pretrial, final pretrial, or settlement conference without good cause shown, the Judge or any magistrate presiding at the conference shall have the authority to dismiss the case without prejudice, proceed ex parte on the

merits, or use other sanctions as may be deemed appropriate, including, but not limited to, contempt of court.

5. The following decisions may be made at the conference:

- a. A definite schedule for the completion of all discovery;
- b. A definite date for exchange of expert witness reports;
- c. A definite date for filing of all motions;
- d. A date for the final pretrial conference, as needed;
- e. A date for submission of trial statements, as needed; and
- f. The trial date.

6. At the conclusion of the conference, the Court shall prepare an order including definite dates for the items listed in 5 a-f of this Rule. The order shall be journalized and binding on all parties. Copies of the order may be given to the parties at the conclusion of the conference or mailed to the parties via regular mail.

7. If any new parties are added to the litigation subsequent to the case management order, then the Court may set another conference. Unless otherwise specified, the new case management order shall supersede any prior case management order.

8. Final Pretrial Conference

- a. The Court may order a final pretrial on cases where a jury demand or request for a bench trial has been timely filed (and granted) or whenever the Court deems necessary. All final pretrial conferences shall be conducted by the Judge or a magistrate.
- b. All parties and counsel must be present at the final pretrial. If the real party in interest is an insurance company, common carrier, corporation, or other artificial legal entity, then the chosen representative must have full authority to negotiate the claim to the full extent of the demand of the opposing party.
- c. Counsel attending the conference must have complete authority to stipulate on items of evidence and admissions.

## **N. SETTLEMENT CONFERENCES**

1. In addition to any scheduled pretrial conferences, the Court may order a settlement conference, which shall be conducted by a conference manager, who may be the Judge, a magistrate, a judicial clerk or an alternative dispute resolution specialist. Parties should be prepared at the settlement conference to make vigorous effort to achieve settlement. As part of the settlement conference process, the conference manager shall review with the respective

parties the facts of the case, the strengths and weaknesses of the respective positions, and the consequences of proceeding to trial. Parties and counsel should allocate at least two (2) hours for the settlement conference.

2. All parties and counsel are required to attend the settlement conference.

## **O. TRIAL STATEMENTS**

1. When ordered, each party shall submit a trial statement prior to trial.
2. When ordered, each party shall file their trial statement with the Clerk and deliver a copy to the opposing party/counsel as indicated in the Court's order, but in any event no later than seven (7) days in advance of trial, unless otherwise specifically ordered by the Court.
3. Unless otherwise ordered by the Court, the trial statements shall:
  - a. State the facts and legal issues;
  - b. State the agreed stipulations;
  - c. List non-expert witnesses with a brief summary of expected testimony;
  - d. List expert witnesses with reports attached (See Rule 3(R);
  - e. Describe special legal problems anticipated;
  - f. State the estimated length of trial;
  - g. List pretrial motions contemplated;
  - h. List special equipment needed for trial;
  - i. State that all documentary evidence and photos have been marked for identification and confirm that copies have been submitted to the opposing party; and
  - j. List photographs or other non-documentary evidence which may be submitted at trial, and confirm that a copy of the list has been submitted to the opposing party/counsel and that the opposing party/counsel has been offered a reasonable opportunity to examine the evidence before trial.
4. Failure to file a trial statement where ordered, in conformity with the above requirements, may result in dismissal, default judgment or other appropriate sanctions.

## **P. JURY INSTRUCTIONS**

Each party demanding a jury trial must file with the Clerk, deliver to the opposing party/counsel and provide to the Court, no later than seven (7) days in advance of trial, a complete set of instructions suitable for charging the jury in the matter. In an action scheduled for jury trial, any party who has not filed a demand for jury may also file jury instructions.

**FAILURE OF THE DEMANDING PARTY TO FILE JURY INSTRUCTIONS MAY BE CONSTRUED AS A WAIVER OF THE JURY DEMAND.**

**Q. WITNESSES GENERALLY**

Disclosure of fact witnesses' names, addresses and the general nature of their expected testimony may be required at pretrial or under a case management order. Failure to disclose or provide witness information as ordered may result in the exclusion of the testimony of the undisclosed witness(es) at trial.

**R. EXPERT WITNESSES**

1. A party may not call an expert witness to testify unless a written report has been procured from the witness, provided to the opposing party/counsel and filed with the Clerk.

2. Parties shall submit written expert reports no later than ninety (90) days prior to trial. If the expert's evidence is intended solely for rebuttal, the written report must be filed within thirty (30) days of the opposing party's disclosure. Parties shall supplement their expert reports as needed. Supplemental reports must be filed no later than thirty (30) days before trial.

3. The Court, by order in a specific case, may modify the deadlines set forth above. Failure to submit expert reports as required by these Rules, or as allowed by the Court's order, may result in the exclusion of the expert's testimony at trial.

4. Expert reports must include:

- a. The expert's name;
- b. area of expertise;
- c. The expert's qualifications;
- d. A signed written report stating all the opinions to which the expert will testify;
- e. The bases for those opinions;
- f. The data/information considered in forming the opinions;
- g. Exhibits to be introduced as a summary or in support of the opinions;
- h. The compensation the expert is to receive; and
- i. A list of other cases in which the expert has testified within the last four (4) years.

5. An expert will not be permitted to testify or provide opinions on issues not raised in the expert's written report.

**S. CASES HELD FOR AGREED ENTRY**

Parties wishing to submit an agreed entry shall inform the Court of the proposed deadline for submission. Such files shall be marked “hold for entry” (HFE) and will be held for no more than sixty (60) days. If an entry has not been received by the stated date, all remaining claims in the case shall be dismissed without prejudice.

## **T. PROCESS SERVERS**

1. Upon proper motion, the Court may appoint individuals to serve as a process server on a case-by-case basis or as a standing process server, pursuant to Civil Rules 4.1(B) and 45(B), for cases filed in the Housing Division. Standing appointments shall be for a period of no longer than one (1) year from the date of the entry granting the appointment.

### **2. Application for Appointment**

a. Application for appointment shall be by written motion and shall state either the specific case number for which the appointment is sought or the request for a period of appointment not to exceed one (1) year. The filing fee for an Application for Standing Appointment shall be as set forth in Schedule C attached.

b. Motions for appointment shall comply with Civ.R. 4.1. In addition, the motion for appointment shall be supported by an affidavit setting forth the following:

- i. The name, address and telephone number of the applicant;
- ii. That the applicant is eighteen (18) years of age or older;
- iii. That the applicant agrees not to provide service of process in any case in which the applicant is a party, counsel for a party, an employee of the plaintiff or an employee of the plaintiff's management company; and
- iv. That the applicant agrees to follow the requirements of Civil Rules 4 through 4.6, any applicable local rules and any specific instructions for service of process as requested by the party requesting service and/or as ordered by the Court in individual cases.

3. In addition to the motion and affidavit, the applicant requesting a standing appointment shall also submit an order captioned “In Re Appointment of [name of applicant] as Standing Process Server” and stating as follows:

This matter came for consideration upon a Motion for Appointment as Standing Process Server pursuant to Housing Division Local Rule 3(1) et seq. It appearing to the Court that the

applicant has complied with the provisions of Local Rule 3(1) et seq., [name of applicant] is hereby appointed as a Standing Process Server authorized to make service of process in cases filed with this Court for a period of \_\_\_\_\_ from the date of journalization of this order. This standing appointment is revocable by the Court at any time, upon proper motion, after notice and hearing.

4. Orders granting appointments shall be signed by the Judge of the Housing Division. The Clerk shall record the standing appointments in a special journal for entries only for process server appointments from the Housing Division and shall retain the original application/motion and entries.

5. *Effect of Order Granting Standing Appointment.* Thereafter, the Clerk shall accept a time stamped copy of such order as satisfying the requirements of Civ.R. 4.1(B) for designation by the Court of a person to make service of process.

6. *Standing Appointment Revocable.* The use of a standing process server by a party in a landlord/tenant action is a courtesy or privilege extended by the Cleveland Municipal Court's Housing Division. The party's privilege of using a standing process server and/or the standing process server's status may be revoked or terminated after hearing, if it comes to the Court's attention that the party or the standing process server has abused his/her position, has falsified any return of service or has given false testimony. These issues may be raised on the Court's own motion or upon the motion of a party.

## U. PENALTIES

1. If, after notice and hearing, the Cleveland Municipal Court Housing Division has been presented with credible evidence that a process server has abused his/her position, falsified any return of service or given false testimony, then thereafter that process server will be barred permanently from serving in the capacity as a process server. This sanction shall be in addition to any criminal sanction, which may result from the process server's conduct.

2. Upon finding that a process server has abused his/her position, falsified any return of service or given false testimony, then as a penalty, the party employing that process server will be prohibited from using a process server for a period of six (6) months. Upon the occurrence of a second violation by a process server employed by a party, that party shall be permanently barred from using the services of a process server.

## V. PARTIAL DISMISSALS OF CLAIMS

1. Pursuant to Civ.R. 41(A)(2), a party wishing to dismiss one or more but fewer than all of his or her claims against one or more parties shall either (1) file a written motion and

proposed judgment entry with the Clerk of Courts or (2) make an oral motion for partial dismissal at a scheduled hearing before the Court.

2. Any party opposing a written motion for partial dismissal must file a written response with the Clerk of Courts within seven days of the filing of the motion. If a motion for partial dismissal is opposed, it may be set for hearing before the Court.

## **W. NOTICE OF BANKRUPTCY FILING; RELIEF FROM STAY**

1. Civil cases filed in Housing Court are subject to the automatic stay of the federal bankruptcy laws. The stay takes effect even if the Housing Court is unaware of the stay. Any action the Court takes while the automatic stay is in effect is unenforceable and must be vacated.

2. All parties have an obligation to inform the Court if there has been a bankruptcy filing. The party who has filed bankruptcy should file with the Court a notice of bankruptcy. Any other party should file a suggestion of bankruptcy stay.

3. The notice or suggestion of stay, may be filed as a communication. The notice or suggestion should include the name of the party filing bankruptcy, the bankruptcy case number and the date when the bankruptcy was filed.

4. In the event the matter is subject to the federal bankruptcy law's automatic stay, this Court must stay further action until the Bankruptcy Court (1) grants a discharge or confirms a Chapter 13 plan, (2) dismisses the bankruptcy case or (3) grants relief from the automatic stay.

5. To reinstate a case that has been stayed, a party must file a motion with the Clerk of Courts. The moving party must attach documentation showing that the movant either obtained relief from the stay from the Bankruptcy Court or that the stay is no longer in effect.

6. If final judgment was not granted before the automatic stay, the Housing Court may review the status of the stay in six (6) months after the initial stay. Upon the Court's review, if the automatic stay no longer applies and no party has filed a motion to have the case reinstated, the Court will dismiss the case without prejudice for want of prosecution.

## **X. TRANSFER FROM HOUSING SMALL CLAIMS DOCKET TO HOUSING GENERAL DOCKET**

1. Complaints heard on the Small Claims docket of the Housing Court are subject to a \$6,000 limitation in the prayer for relief. Where a complaint, counterclaim or amended complaint on this docket exceeds the limitation, the matter must be transferred to the Housing Division's General Docket for resolution.



2. Upon the Court's determination that the prayer exceeds the limitation, the Court will issue an order directing transfer of the matter upon payment of \$73 to the Clerk of Courts by the party whose pleading exceeded the limitation. The party will then have 14 days to request transfer and pay the transfer fee. The opposing party may request the transfer and pay the fee if they wish.

3. Upon timely request for transfer and payment of the fee, the matter shall be transferred to the Housing Division's General Docket and the Court shall issue a case management order. Upon a failure to timely request the transfer *and* pay the transfer fee, the Court shall deem the claim for damages to be amended to the statutory limit and the matter shall proceed on the Small Claims docket of the Housing Court on that basis.

## **SECTION 4 MAGISTRATES**

### **A. MAGISTRATES**

The magistrates of the Housing Division, or such other magistrates as assigned by the Court, are empowered to hear and report on all cases.

### **B. JUDGMENTS CONFIRMING MAGISTRATE'S DECISION**

The Housing Division Judge shall act on all magistrates' decisions in conformance with Civ.R. 53.

### **C. OBJECTIONS TO MAGISTRATE'S DECISIONS**

1. Filing objections to a judgment on the eviction does not operate as an automatic stay of enforcement of that judgment. A party seeking a stay of execution on the eviction judgment (i.e. stay of the move-out) must file a written request for such stay. The move-out shall proceed unless the request for stay is granted. **IF A MOVE-OUT HAS BEEN ORDERED, PARTIES SHOULD FILE THEIR OBJECTIONS PROMPTLY.** Objections to an eviction ruling shall be ruled upon within fourteen (14) days of hearing or assignment, where no hearing is to be held.

2. For good cause shown, and upon the objecting party so requesting, the Court may extend the timeframe within which to submit the transcript or affidavit. Failure to submit a transcript or affidavit may result in summary overruling of the objections.

## **SECTION 5. ALTERNATIVE DISPUTE RESOLUTION SERVICES**

### **A. OHIO UNIFORM MEDIATION ACT**

Cleveland Municipal Housing Court incorporates by reference R.C. 2710 Uniform Mediation Act (“UMA”).

**B. ALTERNATIVE DISPUTE RESOLUTION SERVICES (Mediation and Settlement Conferences)**

Prior to trial on the eviction, the parties shall have the opportunity to fashion a resolution to their dispute through Alternative Dispute Resolution Services (mediation and settlement conferences) offered at no cost to the parties by the Housing Court.

**C. ALTERNATIVE DISPUTE RESOLUTION SERVICES AVAILABLE ON DATE OF TRIAL**

A sign shall be posted outside the courtroom where eviction hearings are held informing the parties of the opportunity for ADR mediation. On the day of the trial, the magistrate or the services coordinator will announce the availability of ADR mediation. If both parties request or agree to explore ADR mediation, or a magistrate requests mediation, they shall be referred to ADR mediation.

**D. CONFIDENTIALITY OF ALTERNATIVE DISPUTE RESOLUTION COMMUNICATIONS**

Any communications made in the course of and relating to the subject matter of an ADR conference are confidential. No such communication shall be disclosed or subject to subpoena in a civil, criminal or administrative proceeding, except as provided in the Ohio Revised Code and Ohio case law.

**E. CASES ELIGIBLE FOR MEDIATION**

1. The Court has discretion to refer parties to mediation in any eviction claim, or any other civil matter brought before the Court. The Court may issue an order on its own motion, upon the motion of counsel, upon the request of a party, or upon referral by the mediator.
2. The Court shall prohibit the use of mediation in any of the following:
  - a. As an alternative to the prosecution or adjudication of domestic violence;
  - b. In determining whether to grant, modify or terminate a protection order;
  - c. In determining the terms and conditions of a protection order; and
  - d. In determining the penalty for violation of a protection order.

**F. REFERRAL TO RESOURCES**

The court administrator shall maintain resources for mediation parties, including victims

and suspected victims of domestic violence, and encourage appropriate referrals to legal counsel and other support services, such as children's services, domestic violence prevention, counseling, substance and mental health services.

## **SECTION 6 EVICTIONS**

### **A. NOTICE TO LEAVE PREMISES**

1. The language required by R.C. 1923.04(A) to be printed or written in a conspicuous manner in the notice to leave the premises ("Notice") will be presumed by this Court to be conspicuous where the printing or writing of that language is (1) at least twice as large as all other printing or writing on the Notice and (2) printed or written in contrasting, bold face type or writing. Other elements that may assist in meeting the requirement that the statutory language be conspicuous may include combinations of all capital letters, contrasting color, borders or other such elements to be determined on a case by case basis.

2. Proof of service and a copy of the Notice required by R.C. 1923.04(A), (C) or R.C. 5313.06 **must be attached to the complaint**. Failure to do so may result in sanctions, up to the dismissal of the complaint without prejudice.

### **B. COMPLAINTS FOR EVICTION**

An eviction action may be filed as the sole claim in a given case or may be filed in conjunction with additional claims, such as a claim for money damages.

### **C. CLAIMS**

The Housing Court bifurcates the eviction from the claim for money damages. However, the claims may be combined for hearing where (1) a party timely files a jury demand, (2) a party timely files, and the Court grants, a motion for bench trial or (3) the Court so orders for other good cause.

### **D. SPECIFICITY OF COMPLAINTS**

1. Eviction complaints shall comply with Civ.R. 7 through 15. In addition, the complaint shall state a street address of the plaintiff. A plaintiff's address stated as a post office box is insufficient. The complaint shall also (1) identify the trust where the plaintiff is a trustee and (2) identify the property owner where the plaintiff is an agent. Failure to include the property owner in the complaint and on the designation sheet may result in sanctions, up to dismissal of the complaint without prejudice.

2. The grounds for the eviction shall be stated with sufficient specificity to allow the defendant to understand the grounds for the eviction and to formulate a defense, if any. The grounds include, but are not limited to, the following:

- a. non-payment of rent;
- b. termination of a periodic tenancy pursuant to R.C. 5321.17;
- c. expiration of lease;
- d. non-color of title;
- e. violation of R.C. 5321.05(A)(9) (drug activity);
- f. breach of a specific obligation imposed by R.C. 5321.05; or
- g. breach of a specific obligation imposed by a written rental agreement (other than non-payment of rent).

3. Where the parties have executed a written rental agreement (lease), it shall be stated in the complaint, and the rental agreement shall be attached to the complaint, pursuant to Civ.R. 10(D).

4. If the complaint includes a claim for money damages, it shall include the following:

- a. the amount of monthly rent;
- b. the amount of the security deposit, if any;
- c. the month(s) and year(s) for which plaintiff is seeking back rent;
- d. late fees, if any;
- e. the request that rent be awarded until the defendant/tenant vacates or until the lease expires; and
- f. the estimated amount and type of property damage sought, if any.

5. Failure to comply with the requirements of this Local Rule may result in dismissal of the complaint or other appropriate sanctions.

#### **E. EVICTION COMPLAINTS INVOLVING A DECEASED RESIDENT OF A MANUFACTURED HOME PARK**

1. In an eviction action against a deceased resident or deceased resident's estate, plaintiff shall file an affidavit stating that it has searched the appropriate probate records to determine whether a probate court has granted letters testamentary or of administration for the estate.

2. If a probate court has granted letters testamentary or of administration for the estate, plaintiff shall provide the Clerk of this Court the name and address of the probate court, case number of the estate, and name and address of the executor or administrator.

3. If a probate court has not granted letters testamentary or of administration, plaintiff shall provide the Clerk of this Court with the names and addresses of the deceased resident's spouse, if any, and any other member of the deceased resident's immediate family known to the plaintiff.

4. If, after a search of the appropriate records, plaintiff cannot determine whether a probate court has granted letters testamentary or of administration and/or does not possess the information required in paragraphs 2 and 3 of this section, plaintiff shall file an affidavit with the Clerk of this Court stating that plaintiff does not possess such information.

#### **F. EVICTION COMPLAINTS INVOLVING TERMINATION OF A LAND CONTRACT**

1. Within three (3) days of receiving a judgment terminating a land contract, plaintiff must prepare and file with the Clerk a forfeiture entry suitable for recording with the Cuyahoga County Recorder's Office. The entry must be in a form substantially similar to Form 6A of these Rules. The entry must contain the street address of the premises, the permanent parcel number, document identification of the filing of the land contract, and must indicate that the vendee's interest has been forfeited.

2. Upon the Court's issuance of a forfeiture entry, plaintiff shall obtain a certified copy of the entry from the Clerk and file it with the Cuyahoga County Recorder no later than fourteen (14) days after journalization. Failure to do so may result in citation of the party or counsel for contempt of court.

#### **G. SERVICE OF PROCESS**

1. Except as provided in paragraph 2 and 3 below, service of process in eviction actions shall be made pursuant to the Ohio Rules of Civil Procedure and may be accomplished by mail, bailiff service or publication. The plaintiff shall file a written request for the method of service. Plaintiffs may retain, at their own costs, a process server to complete personal or residence service.

2. Pursuant to Civ.R. 1(C)(3), where mail service has been requested, the Clerk shall send service of summons to defendant(s) simultaneously by certified mail pursuant to Civ.R. 4.1 and by ordinary mail pursuant to Civ.R. 4.6. The eviction hearing shall go forward on the scheduled date of trial except where (1) the certified mail is returned undeliverable or (2) the certified mail has not been endorsed and the ordinary mail has returned.

3. Service of process on a deceased resident of a manufactured home park shall be made pursuant to R.C.1923.06(F).

## **H. SERVICE – WHERE MAIL RETURNS UNDELIVERABLE**

1. Where either certified or regular mail returns undeliverable (for example "undeliverable as addressed", "no such number", "moved left no address", "forwarding order expired", or "vacant"), plaintiff may not reissue service to the defendant at the failing address absent further verification of the accuracy of the address.

2. Where mail returns undeliverable as described above, plaintiff may proceed by (1) obtaining documentation from the Post Office indicating that the address is correct and then filing a motion (with the documentation attached) seeking reissuance of service documents at the address, (2) requesting personal or residence service at the address via bailiff or duly appointed process server, or (3) where the eviction address is incorrect, filing an amended complaint indicating corrected or new addresses (mailing and/or eviction) for defendant(s) and requesting issuance of service documents.

3. Where mail returns undeliverable as described above on a complaint for eviction joined with a claim for money damages and plaintiff wishes to proceed solely on the claim for money damages, then plaintiff may file an amended complaint seeking money damages only and stating a new address for defendant. Plaintiffs seeking money damages only must comply with the service requirements under Civ.R. 4 et seq.

## **I. LIMITS ON FILINGS**

Unless otherwise permitted by the Court, no plaintiff may file more than forty (40) eviction cases, including no more than five (5) cases based upon grounds other than non-payment of rent, to be heard on any given call.

## **J. SCHEDULING EVICTION HEARINGS**

1. The eviction shall be set for hearing at 9:00 a.m. twenty-one (21) days from the filing date, unless otherwise ordered by the Court.

2. If the twenty-first day from the filing date is a Court holiday, the eviction shall be set for hearing on the next business day, unless otherwise ordered by the Court.

3. Where any one plaintiff files ten (10) or more eviction cases on any one day, such cases will be scheduled for trial at 10:30 a.m. on the appropriate call day, unless otherwise ordered by the Court.

## **K. ANSWERS, MOTIONS, JURY DEMANDS**

If the defendant files an answer, a motion or a jury demand in an eviction case and the filing causes a new hearing date to be set, the parties shall be notified of the new hearing date by

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ordinary mail, or by such other means as the Court determines are likely to result in adequate notice to the parties.

#### **L. DEFENSES**

At trial on the eviction, the defendant may assert any defense to the eviction without having filed a written answer. If the complaint alleges a claim for money damages, any answer to the claim for money damages must comply with Civ.R. 7 through 15.

#### **M. SPECIAL NEEDS: DEPARTMENT OF AGING, VETERANS SERVICES, ETC.**

Certain defendants may be eligible for assistance through the Department of Aging, various veterans programs, or any other community based programs. The Court may refer tenants, potentially eligible for such assistance, to these programs.

#### **N. COUNTERCLAIMS UNDER R.C. 1923.061(B)**

When the action is based, in whole or in part, on non-payment of rent for residential premises, and during the hearing on the eviction there is evidence presented that the conditions of the premises are at issue or that the provisions of R.C. 3733 or R.C. 5321 may have been violated, the Court shall determine whether an action under R.C. 1923.061(B) is appropriate. If the action is to proceed under R.C. 1923.061(B), the eviction and money damages claims shall be tried together.

#### **O. R.C. 1923.061(B) INITIAL ORDER**

1. Where the Court grants a tenant leave to proceed under R.C. 1923.061(B), the Court shall make an initial order including, but not limited to the following:

- a. Defendant is to (a) file an answer and/or counterclaim and (b) deposit a stated sum under the case number with the Clerk by end of business on a date specific. The date specified shall be no more than ten (10) days after the initial hearing date. In the order, the Court shall state the amount of monthly rent and the months represented by the deposit amount.
- b. The matter shall be set for status hearing within three (3) days after the date for deposit.
- c. The Court shall request an inspection of the premises by the Division of Building and Housing.

2. In the event the defendant deposits as ordered, the matter shall proceed under R.C. 1923.061(B). The status hearing may be converted to a pretrial on all claims of the parties and the matter may be referred to ADR Services (mediation or settlement conference). The Court may order defendant to continue depositing rent monthly by a specified date during the

pendency of the action. Should the defendant either fail to file a counterclaim or fail to deposit as ordered, the matter shall proceed to hearing on the eviction on the date of the status hearing.

**P. JUDGMENTS UNDER R.C. 1923.061(B)**

1. When a defendant/tenant has asserted a counterclaim under R.C. 1923.061(B), the Court shall:

- a. Enter judgments on the plaintiff's claim for money damages and the defendant's claim for money damages;
- b. Where judgment is entered in favor of plaintiff on plaintiff's claim for money damages, of that judgment amount, state separately the amount attributable to plaintiff's claim for rent and the amount attributable to plaintiff's claim for damages;
- c. Based only on the amount of plaintiff's claim for rent and the defendant's claim for damages, determine to whom a net judgment is owed and the amount of that net judgment ("net judgment"); and
- d. Disburse the rent paid into Court by the defendant, if any, as follows: first, to the party to whom the net judgment is owed in an amount not to exceed the net judgment; secondly to the defendant.

2. If (1) the net judgment is in favor of plaintiff, and (2) the defendant prevailed, in whole or in part, on the counterclaim, and (3) the net judgment is not fully satisfied by the disbursement in 1(d) above, then the defendant shall be entitled to pay the plaintiff within five (5) days from the journalization of the decision, by depositing the amount necessary to fully satisfy the net judgment with the Clerk under the case number.

3. If the net judgment is owed to the defendant or, after application of 1(d). above, the net judgment is fully satisfied, then judgment shall be entered for the defendant in the eviction.

**Q. ENFORCEMENT OF EVICTION JUDGMENT: WRITS AND MOVE-OUTS**

1. If judgment is for plaintiff on the eviction, unless otherwise ordered by the Court, the plaintiff may immediately purchase a writ of restitution and schedule a move-out with the Eviction Unit bailiffs.

2. Writs must be timely purchased. Timely purchase is determined according to the following:



- a. Within sixty (60) days of the date of the judgment.
- b. Where the judgment is more than sixty (60) days old, but less than one (1) year old, plaintiff must file a Motion for Leave to Purchase a Writ and serve a copy of the motion on the defendant(s). The Court may schedule a hearing on the motion or decide the motion on the filings of the parties. Upon the granting of the motion, plaintiff may purchase a writ and schedule a move-out.
- c. Plaintiffs may not purchase a writ, or schedule a move-out, on judgments granted more than one (1) year prior to the date of purchasing the writ.

3. Writs are issued by the Clerk's office prior to the move-out. If a writ has not issued within forty-five (45) days of purchase, the Court may, in its discretion, require plaintiff to file a Motion for Leave to Purchase a Writ and serve a copy of the motion on the defendant(s). The Court may schedule a hearing on the motion or decide the motion on the filings of the parties. Upon the granting of the motion, plaintiff may purchase a writ and schedule a move-out.

4. Writs must be executed upon (i.e. the scheduled move-out must occur) within ten (10) days of issuance by the Clerk's office. If a move-out is stayed or canceled, and more than ten (10) days pass between the date the writ issued and the new move-out date, the plaintiff must purchase a new writ, unless waived by the Court.

5. The Clerk shall maintain all writs of restitution for five (5) years from the date of execution.

## **R. SCHEDULING THE MOVE-OUT**

1. In order to arrange for the physical removal of the defendant and their belongings, the following must occur:

- a. Plaintiff must purchase a writ of restitution from the Clerk;
- b. Plaintiff must present the receipt for the writ to the bailiffs in the Eviction Unit of the Court; and
- c. Upon presentation of the receipt, the bailiff shall schedule a move-out date, inform the plaintiff of the scheduled date and provide plaintiff with a list of insured and/or bonded movers and instructions for the move-out process.

2. To permit the City to guard against health and/or safety problems created by the placement of personal property on the tree lawn during move outs, the Bailiffs' Department shall send to each Councilperson a list of the move outs scheduled in that Councilperson's ward, one week before the move out, and, again, on the day of the scheduled move out.

### 3. Move-Outs

- a. Every move-out scheduled by the Court pursuant to a writ of restitution shall be supervised by one or more of the Housing Court bailiffs. The actual physical move-out of defendant's belongings shall be conducted by insured or bonded movers hired by plaintiff.
- b. Plaintiffs scheduling move-outs must contract with an insured or bonded moving company for the physical removal of the defendant's personal property from the subject premises. The moving company must be present at the premises at the time of the scheduled move-out.
- c. On the scheduled date and hour, the Housing Court bailiffs shall meet the plaintiff, or his/her agent, at the premises. The bailiffs shall enter the premises and remove all inhabitants not lawfully entitled to possession. The movers shall then conduct the actual physical move-out and place the defendant's personal property on the tree lawn.
- d. To minimize the likelihood of the personal property being rummaged through or scattered on the tree lawn the movers shall place all loose items of personal property on the tree lawn in sealed, opaque bags or boxes.
- e. The plaintiff in an eviction action is subject to the requirements of the City's Codified Ordinances, including CCO 209.01 which declares trash, junk, garbage and all other waste materials to be a nuisance on the property on which they are found. To that end, plaintiff may remove and dispose of items from the tree lawn not removed by the tenant three hours after completion of the court-supervised move out, or at 5:00 p.m. on the day of the move out, whichever is earlier. If plaintiff pays for removal of the items, plaintiff may plead these costs as damages in the money damages portion of the action.
- f. Should plaintiff fail to comply with the City's Codified Ordinances regarding the prohibition of trash and other waste materials on the property and paragraph E, above, in addition to the remedies set forth in the City's Codified Ordinances, the City may seek to recover the cost of any clean up from the plaintiff. If the City's assessment of costs against the plaintiff becomes final, then the Court may require plaintiff to pay those costs prior to proceeding with any additional move outs. Should plaintiff fail to do so after being ordered by the Court, the Court may enforce that order through contempt proceedings, may require plaintiff to post a bond before proceeding with future move outs, or may impose such other sanctions as it deems appropriate.

4. Whenever operational needs permit, the bailiffs shall visit the premises on the day following the move out, to determine whether debris remains on the tree lawn. If it does, the bailiffs' department may contact the plaintiff, the appropriate City department, or both, regarding the condition and clean-up of the tree lawn.

5. Move-out Contents – Volume, Hazardous Nature

a. The Court recommends that plaintiffs inspect the premises prior to scheduling the move-out date. On the scheduled move-out date, if the Housing Court Chief Bailiff, or Housing Court Chief Bailiff's designee, determines that the volume or nature of the contents of the premises is such that removal of the contents to the tree lawn would create a health or safety hazard, the move-out may be canceled. Thereafter, plaintiff may be permitted to schedule a new move-out date in conjunction with a special waste collection, to be scheduled by the plaintiff. The costs of the special waste collection initially shall be paid by the plaintiff, who may plead such costs as damages in the money damages portion of the action.

b. In addition, if prior to or on the scheduled move-out date, the Housing Court bailiff determines that the removal of the defendant's personal property from the premises to the tree lawn could create a hazard due to an infestation of insects, vermin, etc., the move-out may be canceled, and the Court may request an assessment of the premises by the Health Department. If the Health Department determines that removal of the contents of the premises would create or exacerbate a health hazard, the Court may require the plaintiff to abate the hazard in a manner approved by the Court (e.g. through extermination by a licensed pest control service) prior to proceeding with the move-out. The cost of the pest control service initially shall be paid by the plaintiff, who may plead such costs as damages in the money damages portion of the action.

c. Some move-outs, whether commercial or residential, present unique circumstances that make it impossible, impractical, or hazardous to conduct the move-out in the manner described in 6(R), above. Unique circumstances may include, but are not limited to, occupants of the premises diagnosed with, or having been in close contact with a person(s) diagnosed with an infectious contagious disease. In those cases in which the move-out presents unique circumstances, the Housing Court Chief Bailiff, or Housing Court Chief Bailiff's designee, shall have authority to determine the most appropriate means of executing on the writ of possession and restoring possession of the premises to the plaintiff. This determination may be made prior to, on the date of, or during any move-out. The means of move-out may include, but are not limited to, physical removal of the contents to the tree lawn, physical removal of the contents to a dumpster or other container obtained by plaintiff (at plaintiff's cost and expense),

changing of the locks without removal of the contents, placement of the contents into storage, rescheduling the move out, or any other means deemed necessary in the discretion of the Housing Court Chief Bailiff to restore the premises to the plaintiff.

d. Should the Housing Court Chief Bailiff, or Housing Court Chief Bailiff's designee, determine that the circumstances of the move-out require the placement of the defendant's possessions into storage, the moving company must place those goods into storage in the name of the defendant, with the plaintiff paying for the cost of the movers' labor and for moving the property into storage for thirty (30) days. Items may be placed into a storage facility owned by the mover, or by another entity. However, when using storage facilities owned by someone other than the mover, then neither the name of the plaintiff nor the mover may be submitted by the plaintiff or the mover as a co-owner of the property.

e. Should the defendant's personal property be placed into storage and not retrieved by the defendant, that personal property shall be disposed of in accordance with the provisions of the Ohio Revised Code, including R.C. Chapter 1307 (Warehouse Receipts, Bills of Lading and other Documents of Title) and Chapter 5322 (Storage Facilities). This Rule shall apply whether the storage facility is an independent storage facility or one owned by the mover.

## 6. MOVERS' QUALIFICATIONS

a. Movers performing court-supervised move-outs shall maintain liability insurance or a bond to protect the public against loss sustained by reason of the death of or bodily injuries to persons and for loss or damage to property (except cargo) resulting from the negligence of the mover. The liability insurance shall be in the following minimum amounts: One Hundred Thousand Dollars (\$100,000) for bodily injuries to or death of one person; Three Hundred Thousand Dollars (\$300,000) for bodily injuries to or death of all persons injured or killed in any one accident; and Fifty Thousand Dollars (\$50,000) for loss or damage in any one accident to property of others (excluding cargo). Additionally, movers shall maintain freight cargo liability insurance for the transportation of household goods in the amount of Twenty Thousand Dollars (\$20,000). The insurance policy or bond must include provisions requiring the insurance or bond agents or companies to immediately notify the Housing Division's Chief Bailiff in the event the insurance coverage or bond expires, is limited, revoked or canceled.

b. Movers must be properly registered or licensed with the Ohio Secretary of State, if required by law. This includes a domestic or foreign business entity, such as a corporation, nonprofit corporation, professional corporation, limited liability company, limited partnership, limited liability partnership, or fictitious entity

(including "doing business as" names). A mover who loses its good standing, active registration, or active license or experiences another change in status with the Ohio Secretary of State, must immediately notify the Housing Division's Chief Bailiff of the change in status.

c. Failure to comply with this Rule may result in the removal of the mover's name from the list.

## 7. List of Movers

a. The Court shall maintain a list of movers who have met the qualifications as indicated in Rule 6(R)(5) and have timely applied for inclusion in the list. The list shall be available to plaintiffs scheduling move-out dates. The plaintiff shall not be required to use a mover from the list, but any mover hired by the plaintiff to perform a court ordered move-out must meet the qualifications listed in Rule 6(R)(5).

b. The Court shall update its list of movers annually. By October 1st of each year, the Court shall post notice that movers' applications are being accepted for inclusion in the annual list. This notice shall be posted outside the courtroom where eviction trials are heard and advertised in the Daily Legal News. Movers interested in being added to the list shall submit a completed application form, along with a copy of proof of insurance or bond coverage and a copy of good standing, active registration or active license with the Ohio Secretary of State consistent with the above requirements, to the Housing Division's Chief Bailiff by November 15th of each year.

c. Movers meeting the above qualifications shall be notified by December 15th of each year that they will be included in the list. Upon notice of inclusion and prior to December 31st of that year, the mover must submit a revised copy of their insurance or bond coverage, containing a provision requiring the insurance or bond agent or company to immediately notify the Housing Division's Chief Bailiff in the event that the insurance policy or bond coverage expires or is limited, revoked or canceled.

d. On January 1st of each year, the Court shall make available to the Housing Court bailiffs and the public its list of movers who have met the above requirements.

## 8. Conduct of Movers/Penalties

a. A movers' inclusion on the annual list is a courtesy and a privilege

extended by the Housing Court. The mover's status may be revoked or terminated if it comes to the Court's attention that the party or the mover has abused his/her position, falsified any documents or given false testimony, failed to maintain his/her required insurance policy or bond coverage, failed to maintain good standing, registration or license with the Secretary of State, or failed to abide by these Rules, this Court's guidelines for movers, or any other rule or directive of the Court. These issues may be raised on the Court's own motion or upon motion of a party.

b. Movers participating in court-ordered move-outs must conduct themselves in a professional manner, and comply with all court orders and the directives of the Housing Court's bailiffs. Movers may not remove or take away any of the defendant's personal property from the tree lawn or the premises, even after the move-out is completed.

c. If the Housing Court receives credible evidence that a mover has abused his/her position, falsified any documents or given false testimony, failed to maintain his/her required insurance policy or bond coverage, failed to maintain good standing, registration or license with the Secretary of State, or failed to abide by these Rules, this Court's guidelines for movers, or any other rule or directive of the Court, then that mover will be stricken from the current annual list and barred from inclusion on the list and participation in court-ordered move-outs for the subsequent year.

d. If the Court determines that a mover has violated these Rules or the Court's policies and procedures more than once, the Court may permanently remove the mover's name from the list and prohibit its further participation in court-ordered move outs.

## **S. ENFORCEMENT OF EVICTION JUDGMENT: WRITS, MOVE-OUTS, AND SALES IN MANUFACTURED HOME EVICTIONS**

1. If judgment is for the plaintiff in an eviction action involving a manufactured home, mobile home or recreational vehicle ("home or vehicle"), the plaintiff in the request for writ must identify whether plaintiff seeks a writ of restitution under R.C. 1923.13(A) or a writ of execution under R.C. 1923.13(B).

2. Except as provided in paragraph C below, writs in manufactured home evictions shall be subject to the timeliness requirements set forth in Local Rule 6(Q).

3. When a deceased resident or resident's estate has been evicted from the manufactured home park, plaintiff may not purchase a writ or schedule a move-out on judgments granted more than 90 days prior to the date of purchasing the writ.

4. Redemption of Home or Vehicle Prior to Issuance of Writ

a. At any time prior to the issuance of the writ of execution, the titled owner of the home or vehicle may file a motion with the Court seeking an order allowing for the removal of the home or vehicle from the manufactured home park.

b. The titled owner shall attach to the motion evidence that all of the following have been paid:

- i. All outstanding tax liens on the home or vehicle; and
- ii. All court cost assessed against the defendant in the underlying action, unless the owner is indigent.

5. If it is determined that the titled owner paid, or caused to be paid, the items listed in subsection B of this Rule, the Court may issue an order allowing the titled owner to remove the home or vehicle from the manufactured home park.

6. Procedure for Writs Issued Under R.C. 1923.13(B)

a. Prior to filing the request for writ under R.C. 1923.13(B), the plaintiff shall conduct, or cause to be conducted, a search of the public records that relate to the home or vehicle, and make, or cause to be made, reasonably diligent inquiries, for the purpose of identifying any persons who have an outstanding right, title, or interest in the home or vehicle.

b. Request For Writ

- i. If plaintiff seeks a writ pursuant to R.C. 1923.13(B), plaintiff must file a request for a writ of execution with the Cleveland Municipal Clerk of Court. The request shall be in the form of a motion.
- ii. Plaintiff shall attach to its request for writ of execution a copy of the statutory written notice to remove the home or vehicle it provided to the defendant.
- iii. If the public records search described in 6(a) revealed any person(s) with an outstanding right, title or interest in the home or vehicle, plaintiff shall attach to its request for writ of execution a copy of the statutory written notice it provided to the person(s) and the date it was provided.

7. Request for Writ Deceased Resident

a. If plaintiff seeks a writ of execution pursuant to R.C. 1923.12(E)(3),

plaintiff shall indicate in its request for writ that administration, with respect to the resident's estate, has not been granted by the probate court within 90 days of the date of the eviction of the resident from the manufactured home park pursuant to a judgment entered under section R.C. 1923.09 or R.C. 1923.11.

b. Prior to filing the request for writ under R.C.1923.12(E)(3), the plaintiff shall conduct, or cause to be conducted a search of the public records that relate to the home or vehicle, and make or cause to be made, reasonably diligent inquiries, for the purpose of identifying any person who has an outstanding right, title or interest in the home or vehicle.

c. If the public records search revealed any person(s) with an outstanding right, title or interest in the home or vehicle, plaintiff shall attach to its request for writ of execution a copy of the statutory written notice it provided to the person, and the date it was provided.

d. If the search or inquiries reveal no person who has an outstanding right, title or interest in the home or vehicle, the park operator shall publish notice of the petition for writ of execution in a newspaper of general circulation in the county where the home or vehicle has been abandoned pursuant to R.C.1923.12(E)(3)(b).

e. Plaintiff shall attach to its request for writ of execution written certification by the newspaper of the dates of the publication and an affidavit signed by the park operator attesting to the publication.

#### 8. Move outs

a. From the time of the entry of judgment for the plaintiff on the eviction, until issuance of the writ of execution, plaintiff shall allow defendant access to the home or vehicle at reasonable times to retrieve defendant's personal property and vehicles (i.e. automobiles, vans, etc.) from the manufactured home park.

b. Upon issuance of the writ of execution, the Chief Bailiff or his designee may cause the home or vehicle and all personal property of the defendant to be retained at its current location, until it is claimed by defendant or disposed of in a manner authorized by R.C. 1923.14(B)(3) or (4).

#### 9. Redemption of Home or Vehicle After Issuance of Writ

a. At any time after the issuance of the writ of execution, the titled owner of the home or vehicle may file a motion with the Court seeking an order allowing for the removal of the home or vehicle from the manufactured home park or other place of storage up to the day before the scheduled sale, destruction, or transfer of



the home or vehicle.

b. The titled owner must attach to the motion evidence that all of the following have been paid:

- i. All costs incurred by the bailiff;
- ii. All outstanding tax liens on the home or vehicle; and
- iii. Unless the owner is indigent, all unpaid court costs assessed against the defendant in the underlying action.

c. If it is determined that the titled owner has paid all items listed in B, the Court may issue an order permitting the removal of the home or vehicle from the manufactured home.

#### 10. Redemption of Personal Property

a. At any time prior to the day before sale of the property, the defendant may remove any personal property of the defendant from the abandoned home or vehicle or other place of storage.

b. If the personal property is owned by a person other than defendant, the owner of the personal property may remove the personal property from the abandoned home or vehicle or other place of storage up to the day before sale of the property upon presentation of proof of ownership of the property that is satisfactory to the bailiff conducting the sale.

#### 11. Sale of Manufactured Home or Vehicle or Personal Property

a. Sale of the home, vehicle or personal property shall be conducted in accordance with these Rules and R.C. Chapter 2329.

b. *Commencement of Sale.* As soon as practicable but no later than sixty (60) days after receiving a writ of execution, the bailiff shall commence proceedings for the sale of the home or vehicle that is the subject of the writ and abandoned personal property in accordance with the procedures for the sale of goods on execution under R.C. Chapter 2329.

c. At any time after the issuance of the writ of execution, the holder of any outstanding lien, right, or interest in the home or vehicle, other than the titled owner may stop the bailiff from proceeding with the sale by doing both of the following:

- i. Commence a proceeding to repossess the home or vehicle pursuant to R.C. Chapters 1309 and 1317; and
  - ii. Pay to the park operator all monthly rental payments for the lot on which the home or vehicle is located from the time of issuance of the writ of execution until the time that the home or vehicle is sold pursuant to R.C. Chapters 1309 and 1317.
- d. *Appraisal.* Prior to sale, plaintiff shall file an affidavit signed by the county auditor stating the value of the home or vehicle, which shall be deemed the park operator's sworn testimony pursuant to R.C.1923.13(B)(1)(b).
- e. *Value of Home or Vehicle \$3,000 or Less.* Within thirty (30) days after receiving a writ of execution if the home or vehicle is determined to be abandoned, and the value of the home or vehicle is Three Thousand Dollars (\$3000) or less, the bailiff shall present the writ of execution to the Clerk, for the issuance by the Clerk, of a Certificate of Title transferring the title of the home or vehicle to the plaintiff, free and clear of all security interests, liens, and encumbrances.
- f. Notice of Sale.
- i. The Housing Court bailiffs shall serve upon all persons who are listed on the writ of execution as having any outstanding right, title, or interest in the home or vehicle and personal property at their respective last known address, and to the Auditor and Treasurer of Cuyahoga County, a written notice of the date, time, and place of the sale.
  - ii. In addition to written notice, the bailiff shall give public notice of the date, time and place of sale for at least ten (10) days before the day of sale in a newspaper of general circulation within Cuyahoga County.
- g. *Conduct of Sale.* The sale shall be at public auction, unless the Court, for good cause shown, on application of either party and after notice to the opposing party, makes an order directing the Housing Court bailiffs to sell the home or vehicle at private sale.
- h. *Return of Writ of Execution.* Upon completion of the sale of the home or vehicle as described above, the bailiff shall return the writ to the Court. The return shall contain the date of sale, the conditions of sale (e.g. public or private), the sale price, and the name and address of the purchaser.
- i. *Transfer of Certificate of Title.* Upon the return of the writ of execution, if the Court finds that the sale was made in conformity with R.C. Chapters 1923, the Court shall issue an order directing the Clerk to make an entry on the journal that

the Court is satisfied with the legality of the sale and to issue a certificate of title, free and clear of all security interests, liens, and encumbrances, to the purchaser of the home or vehicle.

- j. Failure of Sale Due to Want of Bidders
- i. If the home or vehicle cannot be sold due to want of bidders after being offered for sale on two (2) occasions, the bailiff shall present the writ of execution unsatisfied to the Clerk for issuance by the Clerk of a certificate of title transferring the title of the home or vehicle to plaintiff, free and clear of all security interests, liens, and encumbrances.
- ii. If the abandoned personal property cannot be sold due to want of bidders after being offered for sale on one (1) occasion, the bailiff shall file a communication with the Court stating such, and the Court shall issue an Order regarding the disposition of the abandoned personal property.
- k. *Distribution of Proceeds of Sale.* The Housing Court Chief Bailiff shall distribute the proceeds from the sale of the home or vehicle in the order of priority set forth in R.C. 1923.14(B)(3).
  - i. The Housing Court Chief Bailiff shall distribute the proceeds of the sale within thirty (30) days after completion of the sale unless, upon motion and for good cause shown, the period is extended by the Court.
  - ii. After distributing the proceeds of the sale the Housing Court Chief Bailiff shall report any remaining money as unclaimed funds pursuant to R.C.169.

## **T. CLAIMS FOR MONEY DAMAGES-DEFAULT HEARINGS**

1. Upon the filing of an eviction action, the Clerk shall schedule a default hearing on the claim for money damages (also known as the "Second Cause"), if applicable.

- a. The default hearing shall be set for twenty-eight (28) days from the date of the eviction hearing, except as provided in B, below.
- b. In cases where the Cleveland Metropolitan Housing Authority is plaintiff, the default hearing shall be set for eight (8) weeks from the date of the eviction hearing.

2. *Notice to Defendant.* If the defendant appears at the eviction hearing, the defendant will be notified in court of the default hearing date on the claim for money damages.

3. *Answer, Appearance of Defendant.* If the defendant files an answer, or other

responsive pleading, to the complaint, the case shall be taken off the money damages default docket and set for a pretrial. If the defendant appears at the money damages default hearing to contest the claim for money damages, for good cause shown, the Court may grant the defendant leave to plead and set the matter for a pretrial.

4. *Default Judgments.* No judgment shall be entered in default cases except upon sworn testimony, given before the Court, by a witness with first hand personal knowledge. In addition, such judgment shall not exceed in amount, the amount as stated in the prayer. See Civ.R. 54(C).

## **U. MOTION TO SEAL EVICTION RECORD**

1. The Court may order the Clerk to seal an eviction record when the interests of justice in sealing the record outweigh the interests of the government and the public in maintaining a public record of the case, including, for example, in the following circumstances:

- a. The court dismissed or entered judgment for the tenant/movant on the claim for eviction;
- b. The landlord dismissed the claim for eviction before adjudication of that claim;
- c. The landlord stipulates, in writing to the Court, to sealing the record, except that sealing of a record solely on the basis of the stipulation by the landlord shall be granted only once in any five-year period ; or
- d. The landlord prevailed on the merits on the claim for eviction, and *all* of the following occurred:
  - i. extenuating circumstances led to the eviction; and
  - ii. at least five years have passed since judgment was entered for the landlord; and
  - iii. at least five years have passed since the tenant has had an adverse judgment granting an eviction in any jurisdiction.

2. Application to have an eviction record sealed must be made by motion. The following conditions apply:

- a. The party seeking to have the record sealed must file a written motion, even if the landlord agrees to the sealing in a settlement agreement or agreed judgment entry. The motion must be accompanied by an affidavit attesting to all relevant facts and a copy of the case docket, and where appropriate, a copy of any settlement or agreed judgment signed by the parties;
- b. The moving party must serve that motion upon the opposing party in the

at that party's last known address, and endorse proof of service on the motion;

- c. The opposing party may file a response within the time specified by the Housing Div. Loc. R. 3(G)(4), *supra*;
- d. Either party may request an oral hearing on the motion; and
- e. The Court, in its discretion, may order service of the motion or the notice of hearing upon the opposing party by certified mail.

3. The Court may consider all relevant factors when examining a Motion to Seal Eviction Record, which may include, but are not limited to:

- a. The disposition of the eviction claim;
- b. Whether the sealing of the record is agreed to or disputed by the opposing party;
- c. If the landlord received judgment on the eviction, the grounds upon which the judgment was granted;
- d. Whether the movant has satisfied any money judgment issued in favor of the opposing party in the eviction case; and
- e. Any other information relevant to the determination of whether justice requires the sealing of the record.

4. If the Court grants a Motion to Seal Eviction Record, the Clerk shall forthwith cause the Tenant's name to be redacted from all public records it maintains, including the electronic case index system, to the same extent that it would for a criminal sealing of records (formerly known as expungement). The Clerk shall retain both the electronic record of the action, and the physical file, should one exist, in accordance with its record retention policy. The Clerk shall ensure that the record of the case can be retrieved and unsealed, if ordered.

5. Sealing the record of an eviction does not authorize a tenant or former tenant to make a false statement regarding the filing or granting of the eviction.

6. Sealing the record restricts public access to the case record; it does not remove the record from the Court's electronic or paper docket. Access to the sealed record shall be limited to the Clerk of Court, the Clerk's designee, the Housing Court Judge, and the Judge's designee. A party to the original action may file a motion requesting access to the record or case file. The Court may provide access to the record as required by law enforcement officials or others conducting official government business.

7. A party to the original action may file a motion seeking to unseal the eviction record, setting forth in the motion and attached affidavit or brief, good cause why the record should be unsealed. Such good cause may include, for example, that the original movant was not

truthful in the motion to seal or that the sealing was procured through fraud. For good cause, the Court may unseal a record on its own motion, after notice to the parties to the case.

## **SECTION 7. RE-RENTAL PROHIBITED UNDER R.C. 1923.15**

### **A. RE-RENTAL PROHIBITED**

If it is established, during any action before the Court, that rental premises are maintained in violation of the Ordinances of the City of Cleveland, R.C. 4781.38 or R.C. 5321.04, the Court may order the owner/landlord to refrain from re-renting the premises until the violations are repaired.

### **B. MOTION TO VACATE ORDER PROHIBITING RE-RENTAL**

Upon completion of repairs, the party against whom the order issued must file a motion to vacate the order prohibiting re-rental. The motion must be granted prior to re-rental of the premises.

### **C. EFFECT OF ORDER ON WRIT OF RESTITUTION**

Issuance of an order prohibiting re-rental shall not affect the issuance of a writ of restitution.

## **SECTION 8. RENT DEPOSITS**

### **A. RENT DEPOSITS**

1. All rent deposits made with the Clerk pursuant to R.C. Chapter 1923 and/or R.C. 5321 shall be in cash, or by certified check or money order, made payable to the Clerk. The Clerk shall perform the ministerial function of accepting all rent that is tendered for deposit. The tenant shall be given a receipt for the deposit. No affidavit shall be required for the depositing of rent. If the tenant has questions about rent deposit procedures, the tenant should be referred to a housing court specialist.

2. All tenants depositing rent with the Clerk shall be required to provide the Clerk with the tenant's name and address, as well as the name and address of the landlord/owner, if known. If the landlord/owner has failed to disclose his/her name to the tenant as required by R.C. 5321.18, the tenant's failure to provide the landlord or owner's name shall not be a bar to a rent deposit.

## **B. RENT DEPOSIT ALTERNATIVE DISPUTE RESOLUTION**

1. Rent deposits may be referred to Alternative Dispute Resolution Services (mediation or settlement conference) for the purpose of providing the landlord and tenant an opportunity to resolve the dispute.

2. Unless otherwise ordered by the Court, rent deposit ADR mediations or conferences are to be scheduled within fourteen (14) days after the tenant initially deposits rent. When the tenant deposits rent with the Clerk, the date, time and place where the conference will be held will be assigned. The Clerk will notify the landlord and tenant promptly of the scheduled conference. The Court, in its own discretion, may schedule additional conferences during the pendency of the rent deposit action.

3. The Clerk will send the rent deposit file to the ADR coordinator at least one (1) day prior to the hearing.

4. The ADR conference manager shall be a person assigned by the Housing Court to act as a neutral third party. The conference manager will not make findings of fact or judge the validity of the rent deposit. Information obtained by the conference manager solely from disclosures made during the conference shall not be considered by the Court in any subsequent action involving the same subject matter, transaction or occurrence as that involved in the ADR mediation conference. Either party, at any time prior to agreeing to a settlement, may withdraw from the conference without affecting his or her rights under law.

5. If the parties come to an agreement, the conference manager will assist in drafting the agreement, which may include release of rent to either or both parties or such other disposition of the funds on deposit as provided by R.C. 5321.07.

## **C. INFORMATION PROVIDED BY THE CLERK TO TENANTS DEPOSITING RENT**

1. When a tenant deposits rent with the Clerk, the Clerk shall inform the tenant of the availability of rent depositing by U.S. mail. The Clerk shall also inform the tenant, orally and in writing of the following:

- a. That the tenant should leave a forwarding address with the Clerk upon vacating the premises upon which the tenant has been paying rent to the Clerk;
- b. That if the tenant fails to give the Clerk a forwarding address, the tenant may jeopardize his or her rights in connection with the rent on deposit; and
- c. That an ADR mediation conference is scheduled in every rent deposit action and the tenant shall be given notice of the scheduled conference date by the Clerk at the time of the initial deposit of rent.

#### **D. RENT DEPOSITING BY MAIL**

Tenants must initiate a rent deposit action by depositing their rent in person with the Clerk during regular business hours. After the initial deposit is made, and the rent deposit account is established, a tenant may make successive rent deposits with the Clerk in person during regular business hours or by regular U.S. mail. A tenant who deposits rent by mail shall be sent a receipt by the Clerk. The Clerk shall provide any tenant who inquires about rent depositing the address to which deposits may be mailed. The tenant's rent shall be deemed deposited with the Court on the date of its posting by the Clerk (deposits usually will be posted within 24 hours of receipt). A tenant who deposits rent by mail must allow sufficient time for mailing and posting of the deposit by the Clerk. The Clerk shall retain the envelope in which the deposit has been mailed in the rent deposit file. The Court recommends that the tenant send his/her rent deposit by registered or certified mail.

#### **E. RELEASE OF RENT ON DEPOSIT**

To receive rent paid to the Clerk under R.C. 5321.07, the landlord must (i) file an Application for Release of Rent pursuant to R.C. 5321.09(A)(2) or (3) or (ii) obtain the tenant's written consent as indicated in R.C. 5321.09(A)(1) or a similar mediated agreement. Release of rent may also occur pursuant to the Court's order after determination of other claims of the parties to the rent deposit.

#### **F. RELEASE OF RENT BY TENANT**

Where a tenant signs a Tenant's Release Letter in person before the Deputy Clerk, certifying that the conditions about which the tenant complained have been corrected, the Clerk shall ask for identification (e.g. a driver's license) to assure that the signatory is the correct party. Where a release letter is not signed in person, the signature must be properly notarized. Each release letter shall be sent to the Housing Court Judge, with an Order for Release of Rent Deposit attached to it. Once the Judge signs the Order for Release of Rent Deposit, the money shall be sent to the landlord.

#### **G. INACTIVE RENT DEPOSIT ACCOUNT**

A rent deposit account initiated by a tenant shall be deemed "inactive" if and when there is no action on the account for a period of three (3) months. Such action includes a deposit of rent, filing of an application for release of rent, filing of a motion to compel repairs, or other pleadings by the tenant or landlord. If a tenant whose rent deposit account has become inactive wants to begin depositing rent again with the Court, the tenant will be required to provide the Clerk with his or her name and address, as well as the name and address of their landlord, if



known, and a new rent deposit account will be started by the Clerk. Inactive status will not result in the automatic release of the rent on deposit. See Rule 8(H).

#### **H. APPLICATIONS FOR RELEASE OF RENT**

Applications for Release of Rent may be made pursuant to R.C. 5321.09(A) or R.C. 5321.10.

#### **I. FILING THE APPLICATION FOR RELEASE OF RENT ON DEPOSIT**

Applications shall be made in writing, similar to or on such forms as may be prescribed by the Court, and shall be filed with the Clerk. Applications may be written in a concise, non-technical form, provided they set forth the alleged facts with sufficient particularity and comprehensiveness to enable a lay tenant/respondent to understand the reasons for the action. If requested by the landlord/petitioner, a housing court specialist shall provide assistance in completing the application.

#### **J. SERVICE OF THE SUMMONS AND APPLICATION**

The Application for Release of Rent shall be served upon the tenant/respondent and shall be treated as a complaint. Service of the summons and application shall be made in conformity with the Ohio Rules of Civil Procedure regarding complaints, except when expressly modified by these Rules.

#### **K. DEFENSES, ANSWERS AND COUNTERCLAIMS**

1. Tenant/Respondents in actions commenced under R.C. 5321.09(B) may assert any defenses as allowed under the Ohio Rules of Civil Procedure. Tenant/Respondents in such actions may also assert any defenses at trial, notwithstanding the absence of a written answer.

2. A tenant/respondent may file a counterclaim regardless of whether the tenant/respondent files a written answer, but the counterclaim must be filed in writing pursuant to the Ohio Rules of Civil Procedure, unless otherwise ordered by the Court. Counterclaims may not be filed on the day of trial. The tenant/respondent shall serve a copy of the counterclaim upon the landlord/petitioner in accordance with the Ohio Rules of Civil Procedure.

#### **L. TRIAL/PRETRIAL**

1. Each Application for Release of Rent shall be scheduled for pretrial within twenty-one (21) days from the filing date or as otherwise ordered by the Court. Trial on an Application for Release of Rent shall be completed within sixty (60) days from the filing date, unless otherwise ordered by the Court for good cause shown. Prior to the date scheduled for

trial, the Court may schedule one or more opportunities for the parties to resolve their dispute through Alternative Dispute Resolution Services (mediation or settlement conference).

2. If either the petitioner or the respondent fails to appear at the time scheduled for trial, the claim or answer of the party appearing at trial may be deemed admitted. After examining the party appearing under oath concerning the claim or answer, and if the facts and law so require, the Court shall enter an order of judgment in accordance with this Rule for the party appearing. If neither the petitioner nor the respondent appears at the time scheduled for trial, the Court shall dismiss the claim without prejudice.

## **SECTION 9 APPLICATIONS TO REMEDY CONDITIONS (MOTIONS TO COMPEL)**

### **A. FILING THE APPLICATION**

Applications to Remedy Conditions made pursuant to R.C. 5321.07(B)(2) shall be made in writing, similar to or on such forms as may be prescribed by the Court, and shall be filed with the Clerk. Such applications may be written in a concise, non-technical form, provided they set forth the alleged facts with sufficient particularity and comprehensiveness to enable a lay landlord/respondent to understand the reasons for the action. If requested by the tenant/petitioner, a housing court specialist shall provide procedural assistance in completing the application.

### **B. SERVICE OF THE SUMMONS AND APPLICATION**

The Application to Remedy Conditions shall be served upon the landlord/respondent and shall be treated as a complaint. Service of the summons and application shall be made in conformity with the Ohio Rules of Civil Procedure regarding complaints, except when expressly modified by these Rules.

### **C. DEFENSES, ANSWERS AND COUNTERCLAIMS**

1. Landlord/Respondents in actions commenced under R.C. 5321.07(B)(2) may assert any defenses in writing on or before the day of trial. Landlord/Respondents in such actions may also assert any defenses at trial, notwithstanding the absence of a written answer.

2. A landlord/respondent may file a counterclaim regardless of whether the landlord/respondent files a written answer, but the counterclaim must be filed in writing pursuant to the Ohio Rules of Civil Procedure, unless otherwise ordered by the Court. Counterclaims may not be filed on the day of trial. The landlord/respondent shall serve a copy of the counterclaim upon the tenant/petitioner in accordance with the Ohio Rules of Civil Procedure.

#### **D. TRIAL ON APPLICATION TO REMEDY CONDITIONS**

1. Each Application to Remedy Conditions shall be scheduled for trial twenty-one (21) days from the filing date or as otherwise ordered by the Court. Prior to, or on, the date scheduled for trial, the Court may schedule one or more opportunities for the parties to resolve their dispute through Alternative Dispute Resolution Services (mediation or settlement conference).

2. If either the petitioner or the respondent fails to appear at the time scheduled for trial, the claim or answer of the party appearing at trial may be deemed admitted. After examining the party appearing under oath concerning the claim or answer, and if the facts and law so require, the Court shall enter an order of judgment and payment in accordance with this Rule for the party appearing. If neither the petitioner nor the respondent appears at the time scheduled for trial, the Court shall forthwith dismiss the claim without prejudice.

### **SECTION 10. TEMPORARY RESTRAINING ORDERS IN CASES OF LOCK-OUTS, UTILITY SHUT-OFFS, OR OTHER UNLAWFUL ACTS**

#### **A. PROCEDURES**

1. A housing court specialist may assist landlords or tenants who seek temporary restraining orders (“TRO’s”) in the procedural process of filling out the proper forms and filing the pleadings with the Court.

2. Prior to granting a TRO, the Court may order a housing inspector or court employee to inspect the premises. The person performing this inspection shall be present for any hearing on the motion.

3. Service of the complaint, motion for TRO, and the TRO (if granted), shall be made upon the defendant in a manner to be determined by the Court, and the manner of service shall be included in the order.

4. Where an order has been issued and served pursuant to this Rule, and the party against whom the order issued has not complied with the order, then the party who obtained the order may file a Statement of Failure to Obey Court Order form or similar notice. A show cause hearing shall be scheduled by the Court. Notice of the show cause hearing shall be served upon the failing party in a manner to be determined by the Court.

5. Prior to the show cause hearing, the Court may order a housing inspector or court employee to inspect the premises to determine compliance or noncompliance with the Court order. The person performing this inspection shall be present for the show cause hearing.

## **B. HEARING ON REQUEST FOR PRELIMINARY OR PERMANENT INJUNCTION**

At the time of the ruling on the motion for the TRO, the Court shall schedule a hearing on the request for a preliminary or permanent injunction and claim for money damages, if any.

## **SECTION 11 RECEIVERSHIPS**

### **A. PROPERTY STATUS REPORT**

1. Concurrent with the filing of a complaint, other pleading, or motion that includes a claim seeking the appointment of a receiver under R.C. 3767.41, the moving party shall complete a Property Status Report on a form prescribed by the Court. The Property Status Report Form may be obtained on the Thirteenth Floor of the Justice Center or from the Housing Court's internet website at <http://www.clevelandhousingcourt.org>. See Form 11A of these rules.

2. Failure to file a completed Property Status Report Form concurrent with the filing of the complaint, pleading or motion shall be grounds for dismissal of the receivership claim without prejudice.

3. The Clerk shall docket the filing of the Property Status Report.

### **B. PRELIMINARY JUDICIAL REPORT**

1. Concurrent with the filing of the complaint, other pleading, or motion that includes a claim seeking the appointment of a receiver under R.C. 3767.41, unless otherwise ordered by the Court, the plaintiff shall file an original Preliminary Judicial Report ("PJR"), as evidence of the state of record title of the property.

2. The PJR shall be prepared by a title company or its agent and shall guarantee an amount not less than the unpaid principal balance due on the first lien or such other amount as may be allowed by the Court for each property involved. A photocopy of the original PJR, certified by the title company, may be filed with the Clerk in lieu of the original. The PJR shall become and remain a part of the court file in the action.

3. Failure to file the PJR in accordance with the requirements of this Rule shall be grounds for dismissal without prejudice of the receivership claim. Prior to such dismissal, any other interested party, upon notice to the plaintiff, may procure the PJR and file it in the case.

4. Where the PJR indicates that necessary parties have not been made defendants, the plaintiff or the party filing the PJR shall proceed without delay to cause such new parties to be added and served.

### **C. NOTICE OF LIS PENDENS**

1. Within thirty (30) days of the service of summons upon the record titleholder, the plaintiff must prepare and file with the Cuyahoga County Recorder's office ("Recorder") a Notice of Lis Pendens ("Notice"). The Notice shall be labeled as a "Notice of Lis Pendens" and contain the following information: property address, legal description of the property, permanent parcel number, case caption and number of the Housing Court case. A sample Notice may be obtained on the Thirteenth Floor of the Justice Center or from the Housing Court's internet website at <http://www.clevelandhousingcourt.org>. See Form 11B of these rules.

2. Within seven (7) days of the recording of the Notice with the Recorder, the plaintiff shall file a copy of the recorded Notice with the Clerk of this Court. Failure to file a copy of the Notice in compliance with this Rule shall be grounds for dismissal without prejudice.

3. Plaintiff shall record a Release of Lis Pendens ("Release") with the Recorder within fourteen (14) days of the following: (1) a voluntary dismissal, (2) the last day for appeal of an unappealed final judgment, from this Court or any reviewing court, or (3) at such time as is ordered by this Court or any reviewing court. See Form 11C of these rules.

4. Within seven (7) days of the recording of the Release with the Recorder, the plaintiff shall file a copy of the recorded Release with the Clerk of this Court. Failure to file a copy of the Release in compliance with this Rule may be grounds for sanctions.

### **D. SERVICE ON MAGISTRATES' DEPARTMENT; NOTICE; TIME AND DATE OF HEARING**

1. The party filing a complaint, other pleading, or motion that includes a claim under R.C. 3767.41(B)(1) shall provide a copy of the document filed to the Housing Court Magistrates' Department immediately prior to the filing of such document.

2. Upon being notified of the filing of a complaint, other pleading, or motion that includes a claim under R.C. 3767.41(B)(1), the Court shall prepare a notice of the time and date of a hearing on the complaint.

a. If the document being filed is a complaint that includes a claim under R.C. 3767.41(B)(1), the Court shall cause that notice to be transmitted to the Clerk's

office without delay, for docketing and service with the summons and complaint.

b. If the document being filed is a pleading other than a complaint, or a motion that includes a claim under R.C. 3767.41(B)(1), the Court shall prepare and serve a notice of the hearing on the parties.

3. Except as provided in section 11(D)(4), below, the initial hearing shall be scheduled no more than sixty (60) days after the filing of the complaint. The initial hearing shall be held no less than twenty-eight (28) days after the owner of the building and the other interested parties have been served with a copy of the complaint and the notice of the time and date of hearing. Where plaintiff requests service by publication pursuant to Civ.R. 4.4(B), upon motion by the plaintiff or on the Court's own motion, the Court shall continue the first hearing date until such time as publication is complete.

4. If plaintiff requests initial service by publication pursuant to Civ.R. 4.4(A), the initial hearing shall be scheduled no more than ninety (90) days after the filing of the complaint.

#### **E SERVICE OF SUMMONS AND COMPLAINT**

A copy of the complaint, other pleading or motion that includes a claim under R.C. 3767.41(B)(1), the notice of the time and date of hearing described in Local Rule 11(D), and the summons shall be served upon the owner of the building and all other named defendants in accordance with the Ohio Rules of Civil Procedure.

#### **F. POSTING OF SUMMONS AND COMPLAINT**

If the plaintiff makes a written request for ordinary mail service, or relies upon service by publication because certified mail service, personal service, or residence service of the complaint and notice is refused, or certified mail service of the complaint and notice is not claimed, then the plaintiff shall post a copy of the complaint and notice in a conspicuous place on the building, in addition to the issuance of service by the Clerk. Within seven (7) days of the posting, the plaintiff shall file with the Clerk an affidavit verifying that posting.

#### **G. ABATEMENT OF NUISANCE BY OWNER**

1. If the Court, after hearing, finds that the building involved is a public nuisance, and determines that the owner has not been afforded a reasonable opportunity to abate the public nuisance or has been afforded such an opportunity and has not refused or failed to abate the public nuisance, and if the complaint requests an order requiring abatement of the nuisance, the Court may issue an injunction requiring the owner of the building to abate the public nuisance, or

any other order that the Judge considers necessary or appropriate to cause the abatement of the public nuisance.

2. An injunction issued under Local Rule 11(G)(1), above, shall specify the time within which the owner shall abate the nuisance. That time shall not exceed thirty (30) days from the date of the entry of the order, unless the Judge, for good cause shown, extends the time.

## **H. ABATEMENT BY INTERESTED PARTY**

1. If the Court, after hearing, finds that the building involved is a public nuisance, and determines that the owner of the building previously has been afforded a reasonable opportunity to abate the public nuisance and has refused or failed to do so, and if the complaint requests an order requiring abatement of the nuisance, the Court shall offer any mortgagee, lien holder, or other interested party (as defined in R.C. 3767.41(A)(4)) associated with the property on which the building is located, in the order of the priority of interest in title, the opportunity to undertake the work and to furnish the materials necessary to abate the public nuisance.

2. Prior to selecting any interested party to abate the nuisance, the judge shall require the interested party to demonstrate the ability to promptly undertake the work and furnish the materials required, to provide the Judge with a viable financial and construction plan for the rehabilitation of the building as described in R.C. 3767.41(D) and Local Rule 11(K), and to post security for the performance of the work and the furnishing of the materials.

## **I. EXPENDITURES OF INTERESTED PARTY**

1. If the Court grants an interested party (not a receiver) the authority to abate the nuisance, the interested party must file a motion with the Court seeking prior approval of its proposed expenditures.

2. Within sixty (60) days of journalization of the judgment entry pre-approving the expenditures, the interested party shall file with the Recorder a certified copy of the judgment entry, with a sufficient description of the property on which the building is located.

3. Within seven (7) days of filing in accordance with (B) above, the party shall file with the Clerk of this Court proof of that recording.

## **J. APPOINTMENT OF RECEIVER**

1. For an entity or individual to be considered for appointment by the Court as a receiver, the entity or individual first must file with the Court and serve upon all parties a plan for the rehabilitation of the building involved as described in R.C. 3767.41(D) and Local Rule 11(K).

2. If the Judge determines at the hearing that no interested party is willing or able to undertake the work and to furnish the materials necessary to abate the public nuisance, or if the

Judge determines at any time after the hearing that any party who is undertaking corrective work pursuant to this division cannot or will not proceed, or has not proceeded with due diligence, the Judge may appoint a receiver pursuant to R.C. 3767.41 to take possession and control of the building.

3. The receiver may be a financial institution that possesses an interest of record in the building or property, a nonprofit corporation as described in R.C. 3767.41(B)(1) and (C)(3)(b), including the plaintiff, or any other qualified property manager.

## **K. FINANCIAL AND CONSTRUCTION PLAN**

1. The plan submitted by an interested party seeking to be appointed as receiver must contain financial and construction information and must demonstrate that the entity or individual has the capacity and expertise to perform the required work and to furnish the required materials in a satisfactory manner.

2. The plan must contain all of the information that R.C. 3767.41(D) requires, including but not limited to: the estimated cost of the labor, materials, and any other development costs that are required to abate the public nuisance; the estimated income and expenses of the building and the property on which it is located after the furnishing of the materials and the completion of the repairs and improvements; the terms, conditions, and availability of any financing necessary to perform the work and to furnish the materials; and, if repair and rehabilitation of the building are found not to be feasible, the cost of demolition of the building or of the portions of the building that constitutes the public nuisance.

3. The plan must provide for completion of the nuisance abatement work within six (6) months from commencement of the work, unless the Court, upon the filing of a motion by the party seeking the appointment, and a showing of good cause, grants the party leave to submit a plan calling for a longer completion period.

## **L. APPROVAL OF PLAN**

1. Within thirty (30) days after submission of the plan, the Court shall review the submitted financial and construction plan and inform the parties in writing of its action regarding the plan. The Court may accept, reject or modify the plan, or require that additional information be submitted.

2. The Court must approve the plan, and that order must be journalized, prior to the furnishing of materials or the commencement of work.



**M. DEMOLITION**

1. A party seeking an order for demolition of all or part of a building that constitutes a public nuisance must file with the Court and serve upon all parties a written motion seeking that order. The party must demonstrate that the repair and rehabilitation of the building are not feasible. This section does not apply to court-appointed receivers seeking demolition as part of a court-approved nuisance abatement plan.

2. At the time of filing of the motion for an order of demolition, the party seeking demolition must deposit with the Court an amount equal to the costs of demolition and, if any, of the receivership, and, if any, all notes, certificates, mortgages, and fees of the receivership. In the alternative, the party may attach to the motion evidence that such costs and fees have been paid. This section does not apply to Court-appointed receivers seeking demolition as part of a Court-approved nuisance abatement plan.

3. The Court's order ruling on the motion for demolition shall provide for the disbursement of funds deposited under this Rule.

**N. BOND**

The Court may require the receiver to post bond prior to executing the receiver's duties, in an amount fixed by the Judge, but not exceeding the value of the building involved as determined by the Judge.

**O. DUTIES & POWERS OF RECEIVER**

1. If the request for receivership is granted, the Court may empower the receiver to take any of the actions specified in R.C. 3767.41, including (but not limited to) taking possession and control of the building, operating and managing the building, establishing and collecting rents and income, paying expenses, entering into contracts for the performance of work, and entering into financial transactions to secure financing for the performance of work.

2. The entry of appointment of the receiver shall specify the duties and powers granted to the receiver in the specific case.

3. To ensure the stability of the property or building during the action, and the safety of its occupants and neighborhood residents, the Court may order periodic inspections of the premises by the receiver, the City, a Housing Court staff person, or other entity. The Court as needed may schedule status hearings and issue orders based upon these inspections.

## **P. STATUS HEARINGS**

1. The Court shall schedule periodic status hearings to monitor the progress of work at the property. Status hearings shall be held no less frequently than every sixty (60) days.

2. The receiver shall be required to attend the status hearings, and must produce for the Court a current status report regarding the abatement of the nuisance, including financing, work performed, work scheduled, and expenses incurred.

3. Failure of the receiver to appear at the status hearing with the required information may result in the imposition of sanctions.

## **Q. EXPENDITURES OF RECEIVERS**

1. If the Court has appointed a receiver, the receiver may file a motion seeking approval of the expenses, fees or mortgages in accordance with R.C. 3767.41(H)(2)(b).

2. Within sixty (60) days of journalization of the judgment entry approving the expenditures, the receiver shall record with the Recorder a certified copy of the judgment entry, with a sufficient description of the property on which the building is located.

3. If the activities of the receiver include issuance of a mortgage, the filing described in Local Rule 11(Q)(2), above, shall include recordation of the mortgage.

4. Within seven (7) days of recording in accordance with (B) and (C) above, the party shall file with the Clerk of this Court proof that filing.

## **R. PRIORITY OF LIENS**

The priority of liens shall be established in accordance with R.C. 3767.41.

## **S. MOTION FOR SALE OF PROPERTY**

1. After the Court determines that the receiver has abated the public nuisance, the receiver or any interested party, under R.C. 3767.41, may file a written motion with the Court seeking an order directing the receiver to sell the building and the property on which it is located.

2. If the owner has not paid in full, within three (3) days after the Court has declared that the receiver has abated the nuisance, all of the costs, expenses, and approved fees of the receivership, the Court may order the sale of the property as described in R.C. 3767.41.

3. Notice of Hearing on Motion for Sale of Property

- a. The Court shall set the motion for sale of property for hearing at the earliest available date, but no later than thirty (30) days after the filing of such motion.
  - b. The Court shall notify the receiver or interested party of the date, time and location of the hearing.
4. The receiver or interested party requesting an order for sale shall cause a notice of the date and time of a hearing on the request to be served on the owner of the building involved and all other interested parties in accordance with division R.C. 3767.41(B)(2)(a), and shall file with the Court proof of the service of the notice of the hearing.
5. Hearing on Motion for Sale of Property; Order
  - a. At the hearing on the motion for sale of property, the Court shall consider all relevant evidence, including the benefits of selling the property, as well as the benefits of not authorizing sale.
  - b. If the motion is granted, the Court may enter an order directing the receiver to offer the building and the property for sale. The order shall set forth the terms and conditions of the sale.
6. Distribution of Proceeds of Sale
  - a. After a sale is ordered under R.C. 3767.41, the receiver shall distribute the proceeds of the sale and the balance of any funds that the receiver may possess, after the payment of the costs of the sale, in the order of priority set forth in R.C. 3767.41(I)(3).
  - b. The receiver shall distribute the proceeds of the sale within thirty (30) days after completion of the sale, unless upon motion and for good cause shown this period is extended by the Court.
  - c. The Court may order excess proceeds, if any, from the sale to be deposited with the Court, should such deposit be necessary to ensure the return of the funds to the appropriate recipient.
  - d. Any lien holder, or other person or entity asserting an interest in the proceeds of the sale after the initial distribution may file a motion with the Court requesting a supplemental distribution of the monies remaining on deposit with the Court.

## **T. DISCHARGE OF RECEIVER**

1. The receiver may be discharged at any time in the discretion of the Court.
2. The receiver shall be discharged by the Court upon a sale of the building and property as provided in R.C. 3767.41(I)(4), or when the public nuisance has been abated, as provided in R.C. 3767.41(J)(1).

## **U. TERMINATION OF RECEIVERSHIP**

1. Within fourteen (14) days following distribution of proceeds of sale, the receiver shall file a written motion with the Court requesting an order terminating the receivership.
2. If the Court determines that the sale of the building and the property occurred in accordance with the terms specified by the Court, and that the receiver distributed the proceeds of the sale and the balance of any funds that the receiver possessed, after the payment of the costs of the sale, and if the Court approves any final accounting required, the Court shall issue an order terminating the receivership.
3. The Court may rule on the receiver's motion without a hearing, if it can determine from the written motion that the requirements of Local Rule 11(u)(2)) have been met.

## **V. COUNSELING**

The Court may appoint a judicial clerk, staff attorney, housing court specialist, or other member of the Housing Court staff to provide information to the property owner(s) or tenants regarding the Court's receivership process. The Court may schedule one or more opportunities for the parties to meet with the appointed Housing Court staff member to discuss the receivership process.

## **W. TENANTS**

In order to educate the tenants in residential property about their rights and responsibilities during the pendency of a receivership, the Court may send, or require the plaintiff or the receiver to send, information in a form prescribed by the Court to tenants residing in a subject property.

## **X. FORECLOSURE**

If the receiver or any other party in an action filed pursuant to R.C. 3767.41 includes in the complaint, or in any amended or supplemental complaint or other pleading, a request to foreclose on the subject premises, then the requirements set forth in Local Rule 12 also shall apply.

## **SECTION 12    FORECLOSURES**

### **A.     ASSIGNMENT OF FORECLOSURE CASES**

The Clerk shall assign all foreclosures of real property filed in the Cleveland Municipal Court to the Housing Division.

### **B.     CASE DESIGNATION SHEET**

1.     Concurrent with the filing of the complaint in foreclosure, plaintiff shall submit a completed Case Designation Sheet as in all other civil cases.

2.     Plaintiffs are not required to submit a Case Designation Sheet upon the filing of a complaint amended or supplemented to include a cause of action in foreclosure.

### **C.     COMPLAINT IN FORECLOSURE**

1.     Within these local rules, and except as otherwise noted, the term “complaint in foreclosure” refers to both an original action in foreclosure, as well as a complaint amended or supplemented to include a cause of action in foreclosure.

2.     Complaints in foreclosure, including cross-claims, counterclaims and complaints amended or supplemented to include a cause of action in foreclosure, must include legible copies of any note, mortgage, lien, or assignment thereof that is the basis of the action.

3.     In a foreclosure based upon receiver’s liens granted under R.C. 3767.41, the party seeking foreclosure shall include a certified copy of the receiver’s lien as filed with the Recorder’s Office with the pleading stating the claim for foreclosure.

### **D.     PROPERTY STATUS REPORT**

1.     Concurrent with the filing of a claim in foreclosure, the party seeking foreclosure shall file a completed Property Status Report on a form prescribed by the Court. The Property Status Report Form may be obtained on the Thirteenth Floor of the Justice Center or from the Housing Court internet website at <http://www.clevelandhousingcourt.org>. See Form 12A of these rules.

2.     Failure to file a completed Property Status Report Form concurrent with the filing of the claim for foreclosure shall be grounds for dismissal of the claim without prejudice.

3. The Clerk shall docket the filing of the Property Status Report.

4. Parties filing claims amended or supplemented to include a cause of action in foreclosure shall file, concurrent with the amended or supplemental complaint, an updated Property Status Report, in accordance with this Rule.

#### **E. PRELIMINARY JUDICIAL REPORT**

1. Concurrent with the filing of the complaint, the party seeking foreclosure shall file an original Preliminary Judicial Report (“PJR”), as evidence of the state of record title of the property.

2. The PJR shall be prepared by a title company or its agent and shall guarantee an amount not less than the unpaid principal balance due on the first lien or such additional amount as may be allowed by the Court for each property involved. A photocopy of the original PJR, certified by the title company, may be filed with the Clerk in lieu of the original. The PJR shall become and remain a part of the court file in the action.

3. If the party seeking foreclosure fails to comply with this requirement at the time of filing the claim for foreclosure, any other interested party, upon notice to the party seeking foreclosure, may procure the PJR and file it in the case. Where the PJR indicates that necessary parties have not been made defendants, the party seeking foreclosure or the party filing the PJR shall proceed without delay to cause such new parties to be properly joined and served.

4. Parties filing complaints amended or supplemented to include a cause of action in foreclosure shall file, concurrent with the amended or supplemental complaint, a Supplemental Judicial Report (see Local Rule 12(I)).

#### **F. NOTICE OF LIS PENDENS**

1. No later than thirty (30) days after service of summons upon the record title holder, the party seeking foreclosure must prepare and file with the Cuyahoga County Recorder’s office (“Recorder”) a Notice of Lis Pendens (“Notice”). The Notice shall be labeled as a “Notice of Lis Pendens” and contain the following information: property address, legal description of the property, permanent parcel number, case caption and number of the Housing Court case. A copy of the Preliminary Judicial Report must be attached to the Notice as filed. A Notice of Lis Pendens Form may be obtained on the Thirteenth Floor of the Justice Center or from the Housing Court’s internet website at <http://www.clevelandhousingcourt.org>. See Form 12B of these rules.

2. Within seven (7) days of filing with the Recorder’s office, the party seeking foreclosure shall file a copy of the recorded Notice with the Clerk of this Court. Failure to file a

Notice of Lis Pendens in compliance with this Rule shall be grounds for dismissal without prejudice.

3. Party seeking foreclosure shall record a Release of Lis Pendens ("Release") with the Recorder within fourteen (14) days of the following: (1) a voluntary dismissal, (2) the last day for appeal of an unappealed final judgment, from this Court or any reviewing court, or (3) at such time as is ordered by this Court or a reviewing appellate court. See Form 12C of these rules.

4. Within seven (7) days of the recording of the Release with the Recorder, the plaintiff shall file a copy of the recorded Release with the Clerk of this Court. Failure to file a copy of the Release in compliance with this Rule may be grounds for sanctions.

5. Plaintiffs filing complaints amended or supplemented to include a cause of action in foreclosure are not required to file a new Notice, provided that a Notice of Lis Pendens was filed properly in the original action, and the case number and caption of the original action remain the same as in the amended or supplemental complaint.

#### **G. REFERENCE TO MAGISTRATE**

Pursuant to Civ.R. 53(C), the Court may refer any foreclosure to a Housing Division magistrate for adjudication of the action or any claims, motions, or matters therein.

#### **H. CASE MANAGEMENT**

1. Housing Court Specialists. Upon the filing of a foreclosure, a housing court specialist may be assigned to individual cases. Housing court specialists provide expert assistance in the context of repairs and maintenance, and may provide information to the parties and tenants about the foreclosure process and available options, and provide status and progress reports to the Court. Housing court specialists may attend Orientation and Work-out Conferences.

2. Orientation. The Court shall hold Orientation sessions, at regularly scheduled intervals, to educate litigants about the foreclosure process, and to provide information specific to foreclosures filed in the Housing Court.

3. Work-out Conferences. Immediately following each Orientation session, the Court will provide space for the parties to participate in a work-out conference. In an effort to provide an atmosphere conducive to meaningful settlement negotiations, plaintiff is required to have a representative present (in addition to counsel for plaintiff) from its financial institution or other organization with settlement authority.

4. Upon service being perfected in a foreclosure action, the Court may issue to the plaintiff and all defendants an initial case management order. The parties shall adhere to this case management schedule unless otherwise ordered by the Court.

5. The case management order may include:

- a. Date for disclosure of witnesses;
- b. Initial status / pretrial conference date;
- c. Dispositive motions cut off date;
- d. Discovery cut off date;
- e. Case management conference date;
- f. Final pretrial conference date; and
- g. Trial date.

6. The Court, in its discretion, may modify the case management schedule as needed.

## **I. EVIDENCE OF TITLE**

1. Supplemental Judicial Reports. A Supplemental Judicial Report may be filed by the party seeking foreclosure, or ordered by the Court either sua sponte on its own motion or in response to a request by a party.

2. Final Judicial Reports. The party seeking foreclosure, or any other party ordered by the Court, shall file a Final Judicial Report before the Decree of Foreclosure is issued. The report shall include a copy of the Court's docket as evidence of the method of service on each of the necessary parties and shall include a statement indicating whether any additional liens or mortgages have been filed since the date of any previous Judicial Reports.

## **J. COST OF TITLE WORK**

Cost for the title work required under this Rule shall include a base search fee not to exceed Three Hundred Fifty Dollars (\$350), plus a premium on the Judicial Report issued, based on an amount not less than the unpaid principal balance due on the first lien on the property or such additional amount as may be allowed by the Court. The cost of the title work shall be taxed as part of the costs in the action.

## **K. CUYAHOGA COUNTY TREASURER**

The Cuyahoga County Treasurer ("Treasurer") shall be named a defendant, but need not answer or otherwise appear or respond to the summons. The Court shall serve the Treasurer with a copy of the Confirmation of Sale or other dispositive order of the Court.

## **L. CONTESTED MATTERS**



1. In the event that a party files an answer, counterclaim, or cross-claim contesting existence, priority, validity or amount of a lien, or any other substantive issue, the Court shall consider the action contested and schedule a pretrial, mediation or settlement conference.

2. The Judge, a magistrate, a staff attorney, or an alternative dispute resolution specialist may conduct the conference. The conference shall be conducted in person, unless otherwise permitted by the Court. In an effort to provide an atmosphere conducive to meaningful settlement negotiations, plaintiff is required to have a representative present (in addition to counsel for plaintiff) from its financial institution or other organization with settlement authority.

#### **M. DISPOSITIVE MOTIONS**

1. After the service of summons on all parties, any party may file a dispositive motion which shall include a proposed Judgment Entry ruling on the motion.

2. If a dispositive motion is granted, the moving party shall file a Supplemental or Final Judicial Report with a proposed Judgment Entry or Decree of Foreclosure, if applicable, within thirty (30) days of journalization of the order granting the motion.

#### **N. NOTICE OF BANKRUPTCY**

If the property owner files a petition under the United States Bankruptcy Code, the case shall be stayed pending evidence from the Bankruptcy Court of relief from the automatic stay. Any party to the case may file a Notice of Bankruptcy. Upon the filing of a Notice of Relief from Automatic Stay or other proper motion the Court may return the case to its active docket.

#### **O. COUNSELING**

The Court may appoint a judicial clerk, staff attorney, or housing court specialist to provide information to the property owner(s) regarding the Court's foreclosure process. The Court may schedule one or more opportunities for the parties to meet with the appointed Housing Court staff member to discuss options and alternatives to foreclosure that may be available in the case.

#### **P. TENANTS**

In order to educate the tenants in residential property about their rights and responsibilities during the pendency of a foreclosure action, the Court may send, or require the plaintiff to send, information in a form prescribed by the Court to tenants residing in a subject property. Tenants are permitted to attend the Orientation sessions given by the Court.

## **Q. TENANT COMMUNICATION TO THE COURT**

1. A tenant residing at a subject property may file a Communication with the Court.
2. The Court shall review the Communication and shall take such action in response as it deems appropriate, including ordering an inspection by the City of Cleveland, conducting a site visit, ordering a conference with the parties, ordering the plaintiff to secure or repair the property, ordering the tenant to deposit rents with the Clerk of this Court, and/or commencing proceedings for the appointment of a receiver.

## **R. RECEIVERS**

1. Any party may file a motion for appointment of receiver, or the Court may initiate such proceedings on its own motion.
2. Upon the filing of a motion for appointment of receiver in a foreclosure case, or notice by the Court of its intention to appoint a receiver, notice of a hearing shall be served on all interested parties by regular U.S. Mail. Notice shall be served at least three (3) days before the date of the hearing. Should the motion for appointment of receiver be filed concurrently with the complaint, the Court may instruct the Clerk to serve the notice of hearing with the summons and complaint.
3. Appointment of Receivers – Prerequisites. Before any receiver is appointed in a foreclosure case, the following must be demonstrated by affidavit, evidence or representation of counsel:
  - a. That legal or equitable grounds exist necessitating the appointment of a receiver; and
  - b. That one or more of the following facts exist:
    - i. The property is insufficient to discharge the mortgage or liens;
    - ii. The property is in danger of being vandalized, destroyed, or its value materially impaired;
    - iii. The mortgagor has abandoned the property;
    - iv. The mortgage embraces the rents and profits in the security;
    - v. The property is income-producing;
    - vi. The mortgage provides for appointment of a receiver without notice; or
    - vii. Tenants verify that rent has not been collected, or repairs requested have not been made at the property.

4. Oath and Bond. Upon appointment, a receiver shall qualify and give a bond in the amount required by the Court. Bond shall be in a sum sufficient to cover the costs of all funds reasonably anticipated to be handled by the receiver during the pendency of the litigation, where

there are rents and profits to be collected, and disbursements made in the management of the property during the litigation. If the receiver fails to qualify and give bond, the appointment is voidable.

#### 5. Duties of Receivers

- a. Pursuant to the order of appointment, receivers may be granted authority to: take charge of property pending litigation, preserve property from waste or destruction, perform ordinary maintenance and repairs, receive rents and profits, hold income subject to order of the Court, and have authority to sue for eviction in the receiver's name and capacity.
- b. Within ninety (90) days of appointment and every ninety (90) days thereafter, the receiver shall file a report of receipts and disbursements.
- c. Receivers appointed pursuant to Court order, subject to the limit set forth below, may expend up to Five Hundred Dollars (\$500) per unit on necessary outlays including: expenditure of repairs, exempt real estate taxes and assessments, gas, light, and water bills, trash pickup and insurance without prior approval of the Court. In multi-unit buildings, the receiver may spend no more than a total of Two Thousand Dollars (\$2000) for these expenses, without prior approval of the Court. Any expenditure over Five Hundred Dollars (\$500) per unit must have prior approval by the Court. All expenditures are subject to final approval by the Court.

### S. JUDGMENT ENTRY DECREE OF FORECLOSURE

The Judgment Entry Decree of Foreclosure shall contain the following:

1. A short recital of pleadings filed by each party;
2. A finding that service of summons upon all defendants was proper and that the Court has jurisdiction over all of the defendants;
3. A finding that certain defendants, if any, are in default for failure to answer, and therefore barred from asserting any claims against the real estate;
4. A finding that the County Treasurer has the first and best lien on the property for real estate taxes due and payable, where appropriate;
5. A finding of the amount due to the plaintiff on the lien and an order rendering judgment in favor of the plaintiff and against those defendants personally obligated where prayed for in the complaint and not previously discharged in bankruptcy;
6. A finding that the plaintiff's lien is first and best (or good and valid) lien on the property after taxes, where appropriate;
7. A finding that the plaintiff is entitled to foreclosure;
8. A finding of the amount, validity and priority of all subordinate liens;
9. A finding of "no just reason for delay";

10. An order that unless the sums found due in the decree are paid in full within three (3) days from the date the decree is entered by the Court, the defendants' equity of redemption will be foreclosed and an Order of Sale will issue to the appropriate Officer to appraise, advertise and sell the property at public sale;
11. An order of distribution of proceeds;
12. A waiver of deposit at sale for first lienholder; and
13. An order to the Clerk and the Cuyahoga County Recorder to fully or partially release the liens and mortgages of record from the property.

#### **T. REQUEST FOR SALE**

1. Any party seeking to have a property sold under a foreclosure decree shall file a Praecipe with the Cleveland Municipal Clerk of Court (“Clerk”) asking the Clerk to issue a copy of the Decree and Order of Sale to the Cuyahoga County Sheriff.

2. The party filing a Praecipe shall deposit the sum of Five Hundred Dollars (\$500) as advanced costs of the Sheriff Sale.

#### **U. SALE OF THE SUBJECT PROPERTY**

1. All judicial sales shall be conducted by the Cuyahoga County Sheriff’s Department and shall follow the procedures set forth by the Sheriff’s Department, unless otherwise ordered by this Court.

2. In limited circumstances, where appropriate and upon showing of good cause, the Court may require that the sale be subject to an existing tenancy on the property.

4. *Sheriff’s Return of Sale.* The Sheriff shall return the Order of Sale to this Court within sixty (60) days from the date of sale advising the Court that the sale was held with or without execution and showing the name and address of the successful bidder(s) and the amount of the bid.

#### **5. Confirmation of Sale**

a. Upon written Motion of any party to the action, the Court may confirm the sale.

b. This Court will not confirm any sheriff’s sale until such time as the party ordering the sale has filed a certificate of service of notice of the sale stating that the notice of sale has been sent to all parties who have appeared in the action, by ordinary mail to their last known address or attorney of record.

#### **6. *Distribution of Sale Proceeds.*** All Orders of Confirmation shall distribute the

proceeds of the sale to the parties according to their priorities.

7. *Supplemental Distribution of Funds.* Any lien holder asserting an interest in the proceeds of the sale after the initial distribution may file a motion with the Court requesting a supplemental distribution of the monies remaining on deposit within thirty (30) days of confirmation of the sale.

8. Sheriff's Deed

a. Pursuant to R.C. 2329.36, the counsel who files the writ of execution shall timely deliver a deed to the Sheriff, and the Sheriff shall record the deed.

b. Failure to timely deliver the deed as set forth in division (a) may result in sanctions the Court determines appropriate including, but not limited to, an order to show cause why counsel should not be held in contempt or assessing costs associated with making and delivery of the deed to the Sheriff for recording.

## **SECTION 13 REMOTE AND VIRTUAL COURT HEARINGS**

### **A. APPLICABILITY**

1. Virtual court hearings may be scheduled and held in all Cleveland Housing Court cases.

2. The Court shall have the discretion to require that any court proceeding be conducted by audio conference or video conference. Every court proceeding conducted by the use of audio conference or video conference shall conform to the requirements of the administrative orders issued by the Cleveland Housing Court or the Cleveland Municipal Court and the civil and criminal rules of procedure. Such proceedings shall hereinafter be referred to as "virtual court hearings."

### **B. REQUIRED SOFTWARE FOR VIRTUAL COURT HEARINGS**

1. All virtual court hearings with video capabilities shall be conducted with Zoom software unless the judge or magistrate presiding over the hearing authorizes the use of a different software or technology that has been deemed trustworthy and reliable for court use.

2. All counsel of record and all self-represented litigants shall be timely notified of the date and time of a scheduled virtual court hearing via telephone, e-mail, regular mail or as otherwise allowed by the Cleveland Housing Court Local Rules or by statute.

3. The Court may designate the conference call or video conference vendor or vendors that must be used for all virtual appearances.

### **C. PROCEDURE FOR VIRTUAL COURT HEARINGS**

1. The Court will schedule a virtual court hearing and notice of the date and time for the proceeding will be provided to all parties by telephone, by regular mail and by e-mail, or as otherwise allowed by the Ohio Rules of Court, Civil or Criminal Rules of Procedure, statute or administrative order of the Cleveland Housing Court. Counsel for the parties and any self-represented party shall also ensure that all necessary equipment and software are in proper working order prior to the time of the scheduled hearing and that bandwidth is adequate for video conference.

2. All parties must contact the Court by email at [housingcourtcivil@cmcoh.org](mailto:housingcourtcivil@cmcoh.org) at least seven (7) days prior to the scheduled virtual proceeding, or within such time as the Court so orders, and request the virtual Zoom link for their hearing. When emailing [housingcourtcivil@cmcoh.org](mailto:housingcourtcivil@cmcoh.org), each party is required to provide their accurate case number and the email address that they would like to have their Zoom link sent to for their virtual hearing.

3. If a case is continued for any reason, each party is required to resend their contact information and email address along with their case number to [housingcourtcivil@cmcoh.org](mailto:housingcourtcivil@cmcoh.org). If the case is continued to a new date and a party fails to resend their email address, the Court may not be required to send that party a new zoom link for the continued hearing date.

4. It is the responsibility of the parties, whether represented by counsel or representing themselves, to have all of their material witnesses present at a virtual court hearing. Each witness who appears must have a government issued photo ID or other acceptable proof of identification with them at the time of the proceeding or the witness may not be allowed to testify, except by consent of all parties. Shortly before the virtual court hearing is scheduled to begin, counsel of record and any self-represented party shall contact each of their respective witnesses and instruct them to be on standby to give their testimony.

5. At the time the virtual court proceeding is scheduled to begin, the Court will connect with all parties and counsel of record using Zoom software or such other software that has been approved. Once it has been determined by the judge or magistrate that all necessary individuals are present and able to see and hear what is transpiring at the proceeding, the hearing shall progress as though the parties were physically present, subject to the rules specifically adopted for virtual court hearings.

### **D. VIRTUAL APPEARANCES IN CRIMINAL PROCEEDINGS**

1. In accordance with Rule 2(I)(3) of these rules, the Court may permit the presence and participation of a defendant by remote contemporaneous video. Virtual hearings are

permitted for non-jail misdemeanor arraignments, sentencing, community control status and violation hearings, pre-sentence investigations and selective intervention program (SIP), provided the request for a virtual hearing has been properly submitted and approved by the Court. Pursuant to the Court's approval and in compliance with Crim. R. 43(A)(2), the following must occur:

- a. The Court gives appropriate notice to all the parties;
- b. The video arrangements allow the defendant to hear and see the proceeding;
- c. The video arrangements allow the defendant to speak, and to be seen and heard by the Court;
- d. The Court makes provision to allow for private communication between the defendant and counsel. The Court shall inform the defendant on the record how to, at any time, communicate privately with counsel. Counsel shall be afforded the opportunity to speak to defendant privately and in person. Counsel shall be permitted to appear with defendant at the remote location if requested; and
- e. The proceeding may involve sworn testimony that is subject to cross examination, if counsel is present, participates and consents.

2. The defendant may waive, in writing or on the record, the defendant's right to be physically present under these rules with leave of court.

3. Where a defendant's conduct in the courtroom is so disruptive that the hearing or trial cannot reasonably be conducted with the defendant's continued physical presence, the hearing or trial may proceed in the defendant's absence or by remote contemporaneous video, and judgment and sentence may be pronounced as if the defendant were present. Where the Court determines that it may be essential to the preservation of the constitutional rights of the defendant, it may take such steps as are required for the communication of the courtroom proceedings to the defendant.

4. *Attire.* Appropriate courtroom attire, whether in a traditional courtroom or a virtual one, helps preserve the dignity of the occasion and promotes public trust and confidence in the judicial proceeding. Therefore, judges, magistrates, attorneys, parties and witnesses should dress for virtual court hearings just as they would dress if they were appearing in a traditional courtroom. The Court will determine the specific dress code for his or her court.

## **E. RECORDINGS IN VIRTUAL HEARINGS AND MEDIATIONS**

1. The hearing may be recorded by the Court in any manner permitted by statute, rule or administrative order of the Cleveland Housing Court. If a settlement agreement is achieved at a settlement conference or at a mediation, the end of the discussion may be recorded for the sole purpose of memorializing the agreement between the parties.

2. Except as noted above, no electronic device or other means may be used by a party, attorney, witness, or any other person to capture images, videos, or sound recordings of any portion of a virtual court hearing without the express written consent of the court. Any person violating this rule may be held in contempt of court.

#### **F. EXHIBITS**

All exhibits offered into evidence during a virtual hearing must comply with the Ohio Rules of Evidence. All exhibits must be filed with the Clerk's Office at least seven (7) days before the hearing date and time, or as otherwise ordered by the Court. All exhibits must be properly served on the opposing party at least seven days before the hearing date and time, unless otherwise approved by the Court.

#### **G. AUDIO, VIDEO OR OTHER TECHNICAL PROBLEMS**

If the Court determines at any time that the audio or video connection is so poor as to interfere with the fair administration of justice, the hearing shall be postponed until such time as a better connection can be obtained or the matter can be set for an in-person court proceeding. However, it shall be the responsibility of a party or counsel for a party to promptly inform the Court if there has been a disruption at their end of the communication that substantially interferes with his or her ability to see or hear what is occurring during the video conference. An objection to the quality of an audio conference or a video conference should be made at the time the connection is substantially impaired or at a reasonable time thereafter.

#### **H. COURT'S DISCRETION TO MODIFY RULE**

1. The Court holds the discretion to modify or change the rules governing virtual court hearings.

2. The Court may require a party to appear in person at a hearing, conference, or proceeding if the court determines on a case-by-case basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case.

3. After a party has requested a telephone or video appearance, if the Court requires the personal appearance of the party, the Court must give reasonable notice to all parties before the hearing and may continue the hearing if necessary to accommodate the personal appearance. The Court may direct the Clerk, a court-appointed vendor, a party, or an attorney to provide the notification.



## **APPENDICES**

### **CLEVELAND MUNICIPAL COURT** **HOUSING DIVISION**

#### **SCHEDULE A**

#### **MINOR MISDEMEANOR OFFENSES SUBJECT TO ALTERNATIVE CITATION FORM (WAIVERABLE OFFENSES)**

Pursuant to Crim.R. 4.1, and as set forth in Local Rule 2.02, the City may issue a citation for violation of the following sections of the Codified Ordinances of the City of Cleveland:

**A. Health Code**

203.07	Accumulations of Garbage, Refuse and Waste
203.08	Parking Waste Collection Vehicles
203.09	Heating Business Buildings
205.02	Nuisance Conditions (animals)
209.01	Nuisance Plants, Refuse, and Surface Water
209.02	Notice Regarding Care of Vacant Lots
211.01	Declaration of Nuisance (vermin or rodent)
211.02	Prevention and Eradication Order

**B. Zoning Code**

337.23	Accessory Uses in Residence Districts
337.231	Portable Storage Containers
347.02	Restrictions on Location of Stables, Poultry Enclosures and Other Enclosures
347.08	Regulations for Trash Areas and Refuse Containers
347.10	Temporary Use Permits
347.121	Hookah Lounges and Vapor Lounges
349.02	Existing Off-Street Parking Facilities
349.04	Required Parking Spaces
349.13	Permitted Garages and Parking Space in Residence Districts
350.19	Nonconforming Signs and Uses
357.13	Yard Encroachments Permitted
357.14	Yard Encroachments Prohibited

**C. Housing Code**

365.01	Certificate of Rental Registration
369.08	Rubbish and Garbage Disposal
369.13	General Maintenance Requirements
369.14	Maintenance of Foundations
369.15	Maintenance of Exterior Walls and Roof
369.16	Maintenance of Interior Walls and Roof
369.17	Infestation by Pests
369.18	Exterior Property Areas
369.19	Secondary Appurtenant Structures
371.05	Lighting of Public Hallways and Common Areas
371.07	Rubbish and Garbage Disposal Facilities
371.10	Sanitation Responsibilities of Owner and Occupant
371.13	Identification of Dwelling Units

D. Fire Code

381.101	Outdoor Grilling Restrictions
392.02	Installation Required
392.03	Testing and Inspection
392.04	Maintenance
392.05	Tampering
392.06	Enforcement

E. Building Code

3101.10(e)	Safety and Maintenance
3101.11	Removal of Graffiti
3103.091	Utility Shut-Off in Vacant and Unsafe Structures
3103.10	Abandoned Service Stations
3105.01	Permits Required; Exceptions
3105.02	Permit Applications; Plans and Specifications
3105.05	Plans Required at Work Site
3109.11	Retractable Awnings
3113.03	Permits; Conditions and Exemptions (signage)
3113.10	Ground Signs
3113.16	Temporary Signs
3125.01	Protection of Excavations

F. Municipal Utilities and Services Code

551.04	Setting Out Containers
--------	------------------------

G. Littering Code

613.05	Depositing Litter, Grass or Leaves in the Street
613.14	Owner to Maintain Premises Free of Litter

**CLEVELAND MUNICIPAL COURT**  
**HOUSING DIVISION**

**SCHEDULE B**

**BAIL IN MISDEMEANOR CASES**

A. Absent a court order on the case governing bond, the Clerk of Court or duly authorized deputy clerk may require that defendants in criminal cases in the Housing Division post bond in accordance with the following schedule:

- |    |                            |           |
|----|----------------------------|-----------|
| 1. | Misdemeanor I              | \$10,000; |
| 2. | Misdemeanor II, III, or IV | 5,000;    |
| 3. | Minor Misdemeanor          | 1,000.    |

B. The Judge of the Housing Division may set bond at higher amount or lower amount, or may order the defendant released on personal recognizance, depending upon all relevant factors, including, but not limited to, the following:

1. The nature or circumstance of the crime charged;
2. The weight of the evidence against the defendant;
3. The confirmation of the defendant's identity;
4. The defendant's family ties, employment history (including current enrollment at a local educational institution), resources, or length of residence in the community;
5. The defendant's character or mental condition;
6. The defendant's record of prior convictions;
7. The defendant's record of appearance or failure to appear at prior court proceedings;
8. Whether the defendant currently is on probation, a community control sanction, parole, post release control, or bail; and
9. All other information which impacts the likelihood of defendant's appearance at trial.

**CLEVELAND MUNICIPAL COURT**  
**HOUSING DIVISION**

**SCHEDULE C**

**FILING FEE FOR APPLICATION FOR APPOINTMENT AS STANDING PROCESS  
SERVER**

The filing fee for an Application for Appointment as Standing Process Server shall be \$50 for the initial application and \$50 for any Application for Renewal of such status.

## APPENDIX TO RULE 2(S) GENERAL COMMUNITY CONTROL SANCTIONS

Appendix to Local Rule 2(S) General Community Control Sanctions (also called General Probation Requirements) of the Housing Division of the Cleveland Municipal Court

1. **Payment of Fines.** The offender must pay by the time to pay (TTP) date any portion of the fine that the Court has ordered executed.
2. **Reporting.** The offender must report as ordered to a Community Control Officer (CCO) if the Court assigns one.
3. **Offender to Provide List of Properties.** The offender must provide to the Court a list of all real property the offender owns or controls. Unless the Court orders otherwise, the list shall include all property, whether it is located in Cleveland, Ohio or elsewhere, and shall include the offender's personal residence. The Court may order that the list of properties be in a particular form or contain particular information about the properties. The offender must notify the Court whenever the offender has any change in the property owned or controlled.
4. **Offender to Keep Properties in Good Repair.** The offender must keep all the offender's properties in good repair. The definition of keeping property in good repair includes the obligation to regularly inspect and maintain the property and the obligation to keep each property clean of debris, secure from entry and free of graffiti. This requirement is in addition to compliance with any city or state code requirements for real property.
5. **Offender to Abide by All Laws.** The offender must abide by all laws, which is a requirement under Ohio law for all probation. Abiding by all laws includes abiding by all city code requirements.
6. **Offender to Visit and Inspect Properties.** The offender must regularly visit and inspect each of the offender's properties. The Court may set a regular schedule of visits and require the offender to take photographs during each visit.
7. **Consent to Entry and Inspection.** The offender must permit any Court representative or City or State inspector to inspect any of the offender's properties on such terms as the Court may order.
8. **Travel Permitted.** Under Ohio law, all probation includes the requirement that the offender not leave the state without the permission of the court. As part of these General Probation Requirements, the Court grants the offender permission to leave the state without requesting permission in each case of travel.

## FORMS

### **FORM 3A APPLICATION FOR ACKNOWLEDGMENT OF GOOD STANDING, CURRENT REGISTRATION OR CURRENT LICENSE**

Cleveland Municipal Court  
Housing Division  
Judge W. Moná Scott

STATE OF OHIO  
CUYAHOGA COUNTY, ss:

Date:

APPLICATION FOR ORDER OF  
ACKNOWLEDGMENT OF GOOD  
STANDING, ACTIVE REGISTRATION  
OR ACTIVE LICENSE OF BUSINESS  
ENTITY – LOCAL RULE 3(C)

Now comes \_\_\_\_\_ and pursuant to Local Rule 3(C)  
respectfully requests [entity's name] this Court accept the attached proof of ☐ good  
standing, ☐ active registration or ☐ active license as satisfying the filing requirements under  
Local Rule 3(C) for a period of one year from the date of the entry granting this request.

This entity ☐ has ☐ has not filed fifty or more eviction complaints with the Cleveland  
Municipal Court Housing Division in the twelve month period immediately preceding this  
application.

Should this application be granted, the applicant agrees to follow the requirements of  
Local Rule 3(C), et seq., including the requirement to notify the Court promptly if the entity's  
status of good standing, active registration, or active license with the Secretary of State changes.

An order for the Judge's signature is attached hereto.

\_\_\_\_\_  
[name and title with entity]





**FORM 3C JOURNAL ENTRY**

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
JUDGE W. MONÁ SCOTT

STATE OF OHIO )

)

)

JOURNAL ENTRY

)

CUYAHOGA COUNTY )

IN RE: APPLICATION OF \_\_\_\_\_  
FOR FILING STANDING PROOF OF REGISTRATION/LICENSE WITH HOUSING  
COURT

DATE: \_\_\_\_\_

This matter came for consideration upon an Application for Acknowledgement of Good Standing, Active Registration or Active License in the Housing Division of the Cleveland Municipal Court pursuant to Local Rule 3(C) et seq. It appearing to the Court that the applicant has complied with the provisions of the applicable rules, acknowledgement of good standing, active registration or active license is granted, and satisfies the requirements of Local Rule 3(C) for a period of one year from the date of journalization of this entry.

The applicant entity is under a continuing obligation to supplement the filing or notify the Court of any change in its standing, registration or license. Acceptance and acknowledgement of the filing of proof is revocable by the Court at any time.

IT IS SO ORDERED.

\_\_\_\_\_  
Judge W. Moná Scott  
Housing Division

**FORM 3D MOTION FOR PROCESS SERVER IN CAPTIONED MATTER**

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO

	)	
	)	Judge W. Moná Scott
Plaintiff	)	
	)	Case No. ____ CVG _____
vs.	)	
	)	MOTION FOR APPOINTMENT
	)	AS PROCESS SERVER
	)	IN CAPTIONED MATTER
Defendant	)	

Now comes Plaintiff in this matter and pursuant to Local Rule 3(T) et seq. and respectfully requests this Court appoint \_\_\_\_\_  
[process server's name, address and telephone number here]

as process server in the above captioned matter. The applicant is more than eighteen years of age and is not a party, counsel for a party, an employee of the Plaintiff or an employee of the Plaintiff's management company. The applicant's affidavit, including averments to the above and the applicant's averment to follow the requirements of the Civil Rules and Local Rules, and an order for the Judge's signature are attached hereto.

\_\_\_\_\_

Motion process server/captioned matter

STATE OF OHIO                   )  
                                       )      ss:      Affidavit  
CUYAHOGA COUNTY           )

1. I am eighteen years of age or older.
2. I am not a party, counsel for a party, an employee of the Plaintiff or an employee of the Plaintiff's management company.
3. I have reviewed, and agree to follow, the requirements of Civil Rules 4 through 4.6, R.C. 1923.06, any applicable local rules including Rule 3(T) et seq., and any specific instructions for service of process as ordered by the Court in this matter.
4. I understand that my appointment is a courtesy and privilege, and that such privilege may be revoked at any time after notice and hearing upon the Court's finding that I have abused my position, falsified any return of service or given false testimony.
5. I understand that a hearing regarding my status may occur upon the Court's own motion or the motion of a party.

[affiant's name here]

[Notary Public]

[Date]

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**FORM 3F ENTRY FOR PROCESS SERVER IN CAPTIONED MATTER**

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO

	)	
	)	Judge W. Moná Scott
Plaintiff	)	
	)	Case No. ____ CVG _____
vs.	)	
	)	
	)	ENTRY
	)	
Defendant	)	

This matter came for consideration upon a Motion for Appointment As Process Server in this matter pursuant to Local Rule 3(T) et seq. It appearing to the Court that the applicant has complied with the provisions of the applicable rules, the following applicant:

\_\_\_\_\_  
[applicant's name]

\_\_\_\_\_  
[applicant's street address]

\_\_\_\_\_  
[City, State zip]

\_\_\_\_\_  
[applicant's area code and phone number]

is hereby appointed as Process Server authorized to make service of process in this matter. This appointment is revocable by the Court at any time, upon proper motion, after notice and hearing.

IT IS SO ORDERED.

\_\_\_\_\_  
Judge W. Moná Scott  
Housing Division

Entry process server/captioned matter

**FORM 3G APPLICATION FOR STANDING PROCESS SERVER (FOR 1 YEAR)**

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION

STATE OF OHIO  
CUYAHOGA COUNTY, ss:

) Judge W. Moná Scott  
)  
)  
) APPLICATION  
) FOR APPOINTMENT  
) AS STANDING PROCESS SERVER  
) IN HOUSING COURT  
)

Now comes \_\_\_\_\_ and pursuant to Local Rule 3(T) et seq.  
[process server's name]

and respectfully requests this Court appoint \_\_\_\_\_  
[process server's name, address and telephone number here]

as a standing process server in cases assigned to the Housing Division of the Cleveland Municipal Court. The applicant is more than eighteen years of age and is not a party, counsel for a party, an employee of the Plaintiff or an employee of the Plaintiff's management company. The applicant's affidavit, including averments to the above and the applicant's averment to follow the requirements of the Civil Rules and Local Rules, and an order for the Judge's signature are attached hereto.

\_\_\_\_\_

Application standing process server

STATE OF OHIO                     )  
  ) ss: Affidavit  
CUYAHOGA COUNTY               )

[affiant's name here]

- FURTHER AFFIANT SAYETH NAUGHT.

Sworn to before me and subscribed in my presence this \_\_\_\_\_.  
[Month, day and year]

[Date]

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**FORM 3I ENTRY FOR STANDING PROCESS SERVER**

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION

STATE OF OHIO  
CUYAHOGA COUNTY, ss:

Judge W. Moná Scott

IN RE: \_\_\_\_\_'S  
APPLICATION FOR APPOINTMENT  
AS STANDING PROCESS SERVER IN HOUSING COURT

This matter came for consideration upon an Application for Standing Appointment as Process Server in the Housing Division of the Cleveland Municipal Court pursuant to Local Rule 3(T) et seq. It appearing to the Court that the applicant has complied with the provisions of the applicable rules, the following applicant:

\_\_\_\_\_  
[applicant's name]

\_\_\_\_\_  
[applicant's street address]

\_\_\_\_\_  
[City, State zip]

\_\_\_\_\_  
[applicant's area code and phone number]

is hereby appointed as Process Server authorized to make service of process in matters assigned to this Division.

This appointment shall expire of its own accord on \_\_\_\_\_  
[month, day and year]

and is further revocable by the Court at any time, upon proper motion, after notice and hearing.

IT IS SO ORDERED.

\_\_\_\_\_  
Judge W. Moná Scott  
Housing Division

Entry standing process server

**FORM 3J NOTICE OF BANKRUPTCY FILING**

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
JUDGE W. MONÁ SCOTT

\_\_\_\_\_  
Plaintiff(s)

Date: \_\_\_\_\_

-v-

Case No: \_\_\_\_\_

\_\_\_\_\_  
Defendant(s)

NOTICE OF BANKRUPTCY FILING

Now comes \_\_\_\_\_, a party in this matter and states that  
[Insert name of party filing notice]  
\_\_\_\_\_ has filed a petition in bankruptcy.  
[Insert name of person who has filed bankruptcy]

The bankruptcy case number is \_\_\_\_\_ and was filed  
[Insert bankruptcy case number here]  
on \_\_\_\_\_.  
[Insert date the bankruptcy case was filed.]

\_\_\_\_\_  
[Signature of party filing notice.]

\_\_\_\_\_  
[Print name of party filing notice.]

SERVICE: I \_\_\_\_\_ sent a copy this Notice via regular U.S. Mail to the opposing  
party/counsel at the following address: \_\_\_\_\_ on  
\_\_\_\_\_, 2015. [Insert street address, city, state and zip code]

\_\_\_\_\_  
[Signature of party filing notice.]



**FORM 6A LAND CONTRACT FORFEITURE ENTRY**

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
JUDGE W. MONÁ SCOTT

\_\_\_\_\_  
Plaintiff(s)

Date: \_\_\_\_\_

-v-

Case No: \_\_\_\_\_

PPN: \_\_\_\_\_

\_\_\_\_\_  
Defendant(s)

JUDGMENT ENTRY:  
FORFEITURE OF LAND CONTRACT

This Court has found Plaintiff entitled to possession of the premises at issue and entitled to termination of the underlying land contract.

Therefore, as of this date, the Land Contract between the parties dated \_\_\_\_\_ of the Mortgage Records of Cuyahoga County as recorded \_\_\_\_\_ (date) is ordered forfeited and canceled. Possession of the property is ordered restored to the Plaintiffs, said property being commonly known as \_\_\_\_\_ (street address, city, state, zip code), and further described as:

[INSERT LEGAL DESCRIPTION]

PERMANENT PARCEL NO. \_\_\_\_\_

Defendants are forever barred and enjoined from asserting any further right, title and interest in the property that was the subject matter of said Land Contract.

Plaintiff must have a certified copy of this entry recorded with the Cuyahoga County Recorder's office no later than fourteen (14) days from journalization.

\_\_\_\_\_  
Judge W. Moná Scott

SERVICE: Copies of this Judgment Entry were sent via regular U.S. Mail to  
Plaintiff's counsel: \_\_\_\_\_  
Defendant \_\_\_\_\_

[INSERT NAME AND MAILING ADDRESS]

[INSERT NAME AND MAILING ADDRESS]

this \_\_\_\_\_ day of \_\_\_\_\_ (month and year). \_\_\_\_\_

**FORM 6B MOTION TO SEAL CLEVELAND MUNICIPAL COURT  
EVICTION RECORD**

HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO  
W. MONÁ SCOTT, JUDGE

CASE NO. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

Plaintiff(s)

- VS-

**MOTION TO SEAL  
EVICTION RECORD**

☐ **ORAL HEARING REQUESTED**

\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

Defendant(s)

1. I am a Defendant in this eviction case.
2. On \_\_\_\_\_ (date), this Court ☐ entered an eviction judgment in favor of the landlord or ☐ entered a judgment in my favor on the eviction claim or ☐ dismissed the eviction claim.
3. I am asking this Court to seal the eviction record because:
  - ☐ The Court dismissed or entered judgment in my favor on the claim for possession; or
  - ☐ The landlord dismissed the claim for possession before adjudication of that claim; or
  - ☐ The landlord agreed, in writing, to seal the record (a copy of that agreement is attached);or
  - ☐ The landlord prevailed on the merits on the claim for possession, and *all* of the following occurred:
    - a. the following extenuating circumstances led to the eviction:  
\_\_\_\_\_  
\_\_\_\_\_; and
    - b. at least five years have passed since judgment was entered for the landlord; and
    - c. at least five years have passed since I have had an eviction judgment entered against me in any jurisdiction.
  - ☐ Other: \_\_\_\_\_
4. I have attached an affidavit attesting to the relevant facts. I acknowledge that submitting false or misleading information about any facts in the attached affidavit, or on any other paperwork submitted to the Court, may be perjury.
5. I have attached the following documentation to verify grounds stated above:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

I (check one) \_\_\_ hand delivered (or) \_\_\_ sent a copy of this motion by regular mail to the \_\_\_ plaintiff (or) \_\_\_ defendant at the address above on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature)

**FORM 6C MOTION TO SEAL  
EVICTON RECORD - AFFIDAVIT**

**Case No.** \_\_\_\_\_

**STATE OF OHIO**

**ss.**

**AFFIDAVIT**

**COUNTY OF CUYAHOGA**

\_\_\_\_\_, being first duly sworn, deposes and says as follows:

1. I am eighteen years of age or older.
2. I was the tenant/defendant in this case.
3. I am moving this Court to order the eviction record to be sealed.
4. I am moving this Court to seal the eviction record because:
  - ☐ A. The court dismissed or entered judgment in my favor on the claim for possession; or
  - ☐ B. The landlord dismissed the claim for possession before adjudication of that claim; or
  - ☐ C. The landlord agreed, in writing, to seal the record, and the Court has not sealed another eviction record for this reason in the last five years; or
  - ☐ D. The landlord prevailed on the merits on the claim for possession, and *all* of the following occurred:
    1. Extenuating circumstances led to the eviction;
    2. At least five years have passed since judgment was entered for the landlord; and
    3. At least five years have passed since the tenant has had an adverse judgment granting an eviction in any jurisdiction.
  - ☐ E. Other: \_\_\_\_\_
5. *(Only complete if requesting the record be sealed under Item 4.D, above)* Here are all of the complete addresses at which I have lived for the past 5 years: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Additional relevant information:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
DEFENDANT

SWORN TO, BEFORE ME, and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

**FORM 11A RECEIVERSHIP PROPERTY STATUS REPORT**

Case No. \_\_\_\_\_

CLEVELAND HOUSING COURT

*Judge W. Moná Scott*

PROPERTY STATUS REPORT - RECEIVERSHIP

Plaintiff(s): \_\_\_\_\_ Defendant(s): \_\_\_\_\_

Address: \_\_\_\_\_

Titled Owner(s): \_\_\_\_\_

Number of Units: \_\_\_\_\_ Use: Residential Commercial Industrial Other

If Use is OTHER, explain: \_\_\_\_\_

Occupied: YES NO If YES, by whom: \_\_\_\_\_

Current code violations: YES NO If YES, explain: \_\_\_\_\_

Ward #: \_\_\_\_\_ Abandoned/Unlicensed Vehicles: YES NO

PPN: \_\_\_\_\_ Is there other pending litigation of property? YES NO

If YES, explain: \_\_\_\_\_

How long has current owner owned property: \_\_\_\_\_

If less than 5 years, list previous owner(s) for last five years: \_\_\_\_\_

Is plaintiff seeking the appointment of a receiver other than itself? YES NO

If YES, who: \_\_\_\_\_

**I certify that the information contained herein is accurate and true, to the best of my knowledge.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Please affix a color photograph of the premises not older than 30 days here.**

**FORM 11B RECEIVERSHIP NOTICE OF LIS PENDENS**

Case No. \_\_\_\_\_

**NOTICE OF LIS PENDENS  
(R.C. 1901.27)**

TO: ALL PERSONS HAVING INTEREST OF CLAIMS REGARDING REAL PROPERTY  
LOCATED AT:

PPN: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

And further described as:

“ \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_”

YOU ARE HEREBY NOTIFIED that on \_\_\_\_\_, \_\_\_\_\_, a civil  
complaint pursuant to R.C. § 3767.41 that may affect the ownership and title of the above  
described real property was filed in the Cleveland Municipal Court Housing Division. This  
pending litigation, Case No.: \_\_\_\_\_, is captioned:

VS.

\_\_\_\_\_  
(Plaintiff)

\_\_\_\_\_  
(Defendant)

The file is available for viewing in its entirety in the office of the Civil Clerk of Court, Cleveland  
Municipal Court, 2<sup>nd</sup> Floor of the Justice Center. All persons interested in or having a claim  
regarding the above-referenced real property are charged with Notice of pending litigation by the  
provisions of R.C. § 1901.27.

\_\_\_\_\_  
Plaintiff/Attorney for Plaintiff  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FORM 11C RECEIVERSHIP RELEASE OF LIS PENDENS**

Case No. \_\_\_\_\_

**RELEASE OF LIS PENDENS  
(R.C. 1901.27)**

The *Notice of Lis Pendens* recorded in the Cuyahoga County records on \_\_\_\_\_, automatic filing number \_\_\_\_\_, giving notice of the pendency of a civil action pursuant to R.C. § 3767.41 in the Cleveland Municipal Court Housing Division captioned:

vs.

\_\_\_\_\_  
(Plaintiff)

\_\_\_\_\_  
(Defendant)

case number \_\_\_\_\_, is hereby released and discharged.

The property affected by this release involves the real property listed in the initial *Notice of Lis Pendens*, and is described as follows:

PPN: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

And further described as:

“

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_”

\_\_\_\_\_  
Plaintiff/Attorney for Plaintiff  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FORM 12A FORECLOSURE PROPERTY STATUS REPORT**

Case No. \_\_\_\_\_

CLEVELAND HOUSING COURT

*Judge W. Moná Scott*

PROPERTY STATUS REPORT - FORECLOSURE

Address: \_\_\_\_\_ PPN: \_\_\_\_\_

Titled Owner(s): \_\_\_\_\_

Number of Units: \_\_\_\_\_ Use: Residential Commercial Industrial

Occupied: YES NO If YES, by whom: \_\_\_\_\_

Current code violations: YES NO If YES, explain: \_\_\_\_\_

Ward #: \_\_\_\_\_ Abandoned/Unlicensed Vehicles: YES NO

Is this property the subject of litigation in any other court? YES NO

If YES, explain: \_\_\_\_\_

How long has current owner owned property: \_\_\_\_\_

If less than 5 years, list previous owners for last five years: \_\_\_\_\_

Is this action being brought pursuant to R.C. § 5721.39? YES NO

**I certify that the information contained herein is accurate and true, to the best of my knowledge.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Please affix a color photograph of the premises not older than 30 days here.**

**FORM 12B FORECLOSURE NOTICE OF LIS PENDENS**

Case No. \_\_\_\_\_

**NOTICE OF LIS PENDENS  
(R.C. 1901.27)**

TO: ALL PERSONS HAVING INTEREST OF CLAIMS REGARDING REAL PROPERTY  
LOCATED AT:

PPN: \_\_\_\_\_  
\_\_\_\_\_

And further described as:

“  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_”

YOU ARE HEREBY NOTIFIED that on \_\_\_\_\_, \_\_\_\_\_, a civil  
complaint in foreclosure that may affect the ownership and title of the above described real  
property was filed in the Cleveland Municipal Court Housing Division. This pending litigation,  
Case No.: \_\_\_\_\_, is captioned:

VS.

\_\_\_\_\_  
(Plaintiff)

\_\_\_\_\_  
(Defendant)

The file is available for viewing in its entirety in the office of the Civil Clerk of Court, Cleveland  
Municipal Court, 2<sup>nd</sup> Floor of the Justice Center. All persons interested in or having a claim  
regarding the above-referenced real property are charged with Notice of pending litigation by the  
provisions of R.C. § 1901.27.

\_\_\_\_\_  
Plaintiff/Attorney for Plaintiff  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**FORM 12C FORECLOSURE RELEASE OF LIS PENDENS**

Case No. \_\_\_\_\_

**RELEASE OF LIS PENDENS  
(R.C. 1901.27)**

The *Notice of Lis Pendens* recorded in the Cuyahoga County records on \_\_\_\_\_,  
automatic filing number \_\_\_\_\_, giving notice of the pendency of a civil  
complaint in foreclosure in the Cleveland Municipal Court Housing Division, captioned:

vs.

\_\_\_\_\_  
(Plaintiff)

\_\_\_\_\_  
(Defendant)

case number \_\_\_\_\_, is hereby released and discharged.

The property affected by this release involves the real property listed in the initial *Notice of Lis Pendens*, and is described as follows:

PPN: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

And further described as:

“

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_”

\_\_\_\_\_  
Plaintiff/Attorney for Plaintiff  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_