



pennsylvania
COMMISSION ON CRIME
AND DELINQUENCY

CONSTABLE FIELD REFERENCE GUIDE

CIVIL LAW



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Civil Law Glossary

1. **Adult** – an individual 18 years of age or older.
2. **Attorney of Record** – an attorney at law who has filed a written document in accordance with Rule 207.1 as appearing for and representing a party in a legal proceeding.
3. **Certiorari** – a writ that a superior appellate court issues in its discretion to an inferior court, ordering it to produce a certified record of a particular case it has tried, in order to determine whether any irregularities or errors occurred that justify review of the case.
4. **Competent Adult** – an individual 18 years of age or older who is (1) not an incapacitated person, (2) not a party to the action, and (3) not an employee or a relative of a party.
5. **Complaint** – a written statement that begins a civil lawsuit in which the plaintiff details the claims against the defendant.
6. **Defendant** – the party who is being sued in a civil action.
7. **Ex parte** – done by, for, or on the application of one party alone.

Civil Law Glossary

8. **Levy** – to seize or take property upon a writ of execution issued by the court.
9. **Order of Execution** – a court order that directs a constable to levy upon tangible personal property of a defendant to be sold to pay a plaintiff for a money judgment.
10. **Order of Possession** – a court order that entitles a landlord legally to evict a tenant or squatter and to regain possession of the real property.
11. **Plaintiff** – the party who initiates a civil lawsuit against a defendant.
12. **Subpoena** – an order of the magisterial district judge (MDJ) commanding a person to attend and testify at a particular time and place. It may also require the person to produce documents or things which are under the possession, custody, or control of that person.

The rules contained within this publication are not verbatim from Pennsylvania Title 246 – Minor Court Rules. For space consideration issues, they have been condensed.

Enforcement of Judgments-Title 246

Key Facts and Concepts

Rule 402. Request for Order of Execution. Entry of Judgment in Court of Common Pleas

A request for the order of execution needs to be filed within the boundaries in which the MDJ who rendered the judgment conducts his magisterial business.

The request for an order of execution cannot be filed before the expiration of 30 days from the date the judgment is entered by the MDJ, but must be filed within five years of that date.

Rule 403. Issuance and Reissuance of Order of Execution

Upon the filing of the request form, the MDJ shall note on the form the time and date of its filing and shall issue the order of execution.

- The MDJ shall deliver the order of execution for service and execution to any certified constable in the county in which the office of the MDJ issuing the order is situated.
- If this service is not available to the MDJ, service may be made by any certified constable of the Commonwealth.

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Rule 404. Notation of Time of Receipt

The certified constable receiving the order shall note upon the form the date and time when it was received.

Rule 405. Service of Order of Execution

A. Service of the order of execution shall be made by any certified constable in the county in which the office of the MDJ is situated by levy within 60 days of the issuance or reissuance of the order.

B. At the time of the levy, the officer executing the order shall:

- Give the defendant a copy of the order or
- Leave it at the place of the levy.

If the place of the levy is not the defendant's residence or usual place of business and the defendant has not been given a copy of the order, the copy shall be mailed to the last known address of the defendant.

If the levy is made upon property of the defendant in the possession of another person, a copy of the order also shall be made available to that person.

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Rule 406. Property Subject to Levy

The levy pursuant to the order of execution issued by the MDJ shall be made only upon tangible, nonperishable personal property of the defendant. The levy may be made upon any such property within the county where the order is issued.

Rule 407. General Monetary Exemption

A defendant may claim his statutory exemption in kind or in cash at any time before the date of the sale by notifying the officer executing the order of his claim and, if the exemption is claimed in kind, by designating the specific items of property.

Rule 408. Setting Aside Exempt Property

The defendant, or any party in interest, may appeal to the MDJ who issued the order of execution from any appraisal or designation of property made by the executing officer, provided the appeal is made within two (2) days after the appraisal or designation; but the plaintiff may appeal at any time before the sale from a setting aside of property by the executing officer on the grounds that it is excessive or illegal.

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Rule 411. Right of Executing Officer to Break and Enter

The officer executing the order, after having made a levy upon any personal property, may enter the place or building in which the goods are contained either peaceably or by breaking in by force for the purpose of taking manual possession of or selling the property levied upon.

Rule 412. Notice of Sale

The executing officer shall give notice of the sale of personal property at least six days prior to the sale.

The executing officer shall give notice of the sale in the following manner:

- By handbill, posted in the magisterial district court from which the order of execution issued and,
- If different from the court from which the order issued, in the magisterial district court in the magisterial district in which the place of the sale is located.
- By handbill posted at the place of sale and, if different from the place of sale, at the place of levy.

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- By mailing a copy of the handbill to the plaintiff and to the defendant at his last known address. The notice of the sale shall include a notice that all claims to the property must be filed before the sale in the magisterial district court from which the order of execution issued and that all claims to the proceeds must be filed in that court before distribution.
- A proposed schedule of distribution will be filed in that court on a date specified not later than five days after the sale.
- Distribution will be made in accordance with the proposed schedule unless exceptions are filed in that court within 10 days thereafter.
- No further notice of the filing of the schedule of distribution need be given.

Rule 414. Plaintiff as Purchaser

Whenever personal property sold on execution is purchased by a plaintiff entitled to receive all or part of the proceeds of the sale, the officer executing the order, upon proof of that fact, shall accept on account of the purchase price the receipt of the plaintiff up to the amount of the proceeds to which he is entitled.

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Rule 415. Transfer of Property to Purchaser

When the officer executing the order sells personal property in execution, he shall, upon request of the purchaser, execute and deliver to the purchaser a bill of sale setting forth the caption of the case and a description of the property.

Rule 416. Distribution of Proceeds. Priorities

A. Not later than five days after the sale of personal property, the officer executing the order shall prepare a proposed schedule of distribution of the proceeds of sale which shall be kept on file in the MDJ office from which the order issued. No schedule of distribution need be filed when the property is sold to the plaintiff for costs only.

B. When a receipt of the plaintiff has been accepted on account of the purchase price, the schedule shall set forth the plaintiff's name and address, the amount of the judgment, and the amount of credit claimed or allowed upon the purchase price.

C. Unless written exceptions are filed in the office of the MDJ from which the order issued not later than 10 days after the filing of the proposed

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schedule of distribution, the officer executing the order shall distribute the proceeds of the sale directly to the party or parties entitled to receive the proceeds in accordance with the proposed schedule.

D. When levies are made against the same property by one or more executing officers under orders of execution issued at the request of separate plaintiffs, priority of distribution of the proceeds of the sale as between such plaintiffs shall be determined by the time when their respective requests for orders of execution or reissuance thereof were filed in the office of the issuing MDJ.

Rule 417. Officer's Expenses and Fees

The plaintiff shall pay expenses and fees of execution promptly upon demand of the executing officer, but before service of the order of execution the executing officer may require the plaintiff to pay in advance only expenses and fees incident to levy.

Rule 418. Abandonment of Levy for Inability to Hold Sale

The officer executing the order shall abandon the

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levy if sale of the property levied upon is not held within three months after the levy, except during periods in which a sale is stayed. In all cases the officer executing the order shall abandon the levy if sale of the property levied upon is not held within six months.

Rule 419. Officer's Return

The officer executing the order shall make a return on the order of execution form. The return shall show:

- The date, time and place of any levy.
- His appraisal of the value of any property set aside as exempt property.
- The date, time and place of any sale.
- The proceeds received from any sale, specifying any sale on receipt to the plaintiff.
- His expenses and fees.
- Any distribution made by him.
- If no levy upon property of the defendant could be made; or if the levy was abandoned, the reasons therefore; or that the order was returned unexecuted for nonpayment of expenses and fees.

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Key Questions

1. Did I note on the Order of Execution form the date and time when it was received?
2. Did I properly service the Order of Execution to the defendant and to any person who may have property of the defendant in his possession?
3. Did I make available to the defendant the notice required under Rule 405B?
4. Am I able to answer any potential questions related to the Notice to Defendants?
5. Did I provide a Bill of Sale to purchaser(s) of property in the execution?
6. Have I included all necessary information on the Order of Execution Return form?

Street Sense

When issuing a Bill of Sale, be sure to include the caption of the case and description of the property.

The Schedule of Property Levied Upon and Set Aside must be completed by entering specific items of property as well as an appraised value for each individual item. It is recommended that

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brand names, serial numbers, colors, and any other identifying information be included on the form. A general “rule of thumb” when listing an appraised value is 25% of the original cost of the item. However, condition and age of the item should be taken into consideration when making an appraisal.

A defendant is required to allow, and does in fact have a legal obligation to allow, a constable full unmolested access to levied property for the purpose of a constable sale.

An improper levy is one that is made out of county. The venue for any levy must be the same as that for the MDJ issuing the order. The venue is the magisterial district where the Order of Execution was issued.

Attempting to serve the order outside of the venue in which it was ordered constitutes an improper levy. An improper levy actually voids both the MDJ’s and constable’s authority to enforce the order of execution.

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Should you find that the defendant or the assets/ goods are located in another county, do not proceed with the order and levy. Return the order to the issuing MDJ. Do not levy upon or sell goods located out of county.

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Civil Law Procedural Job Aid
Service of Process Time Regulations
for Enforcement of Money Judgments Ordered
by an MDJ

2 Days

Defendant can appeal designation of property set aside.
Setting Aside Exempt Property -
Pa. R.C.P.M.D.J. #408

5 Days

*Constable must prepare a schedule of distributions
of the proceeds and file with the MDJ.*
Distribution of Proceeds. Priorities -
Pa. R.C.P.M.D.J. #416

6 Days

Notice of sale of personal property.
Notice of Sale - Pa. R.C.P.M.D.J. #412

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10 Days

Distribution of the proceeds of a sale must be completed if no exceptions filed.

Distribution of Proceeds. Priorities -
Pa. R.C.P.M.D.J. #416

60 Days

Levy upon defendant's property.

Service of Order of Execution -
Pa. R.C.P.M.D.J. #405

3 Months

Abandonment of levy if sale is not held.

Abandonment of Levy for Inability to Hold Sale -
Pa. R.C.P.M.D.J. #418

Note:

Stays under the rules do not count in three-month total –
then abandonment in ALL cases if sale is not held
within six months.

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Title 246 - Minor Court Civil Rules
Chapter 400. Enforcement of Judgments Rendered by Magisterial District Judges for the
Payment of Money

Job Aid

Civil Action	Description	Time Factor	Rule(s)	Form(s)
Request for Order of Execution. Entry of Judgment in Court of Common Pleas	The first day an order of execution can be entered. This occurs no less than 30 days and no more than 5 years from the date of judgment	Day 1	Pa.R.C.P.M.D.J. # 402	Request for Order of Execution - MDJS 305ABL
Setting Aside Exempt Property	Defendant can appeal designation of property set aside	2 days	Pa.R.C.P.M.D.J. # 408	Objection to Levy Property Claim - MDJS 632BL
Distribution of Proceeds. Priorities	Within 5 days after the sale, constable must prepare a proposed schedule of distribution of the proceeds of sale. Proceeds will be distributed according to proposed schedule unless written exceptions are filed within 10 days after filing of proposed schedule	Within 5 days of sale	Pa.R.C.P.M.D.J. # 416	Proposed Schedule of Distribution - MDJS 309B
Notice of Sale	Notice must be given at least 6 days prior to sale by mailing and posting a handbill	6 days prior to sale	Pa.R.C.P.M.D.J. # 412	Notice of Execution Sale - MDJS 309A
Service of Order of Execution	Service shall be made by the constable within 60 days of the issuance or reissuance of the order	60 days	Pa.R.C.P.M.D.J. # 405	Order of Execution/ Notice to Defendant - MDJS 305B1 and Executing Officer's Return - MDJS 305C
Service of Order of Execution	Levy upon personal property must be completed in 60 days from issue date of order of execution	60 days	Pa.R.C.P.M.D.J. # 405	Notice of Levy - MDJS 306B and Schedule of Property Levied Upon and Set Aside - MDJS 306A1
Abandonment of Levy for Inability to Hold Sale	Abandonment of levy if levied property not sold within 3 months after levy (6 months if there is a stay of execution)	3 months	Pa.R.C.P.M.D.J. # 418	

Forms
Chart

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1. Receive copy of Request for Order of Execution (MDJS 305ABL) from MDJ.
2. Complete appropriate lines on Order of Execution (note time and date).
3. Locate and verify residence of defendant(s) named in Order of Execution.
4. Serve individual Order of Execution Notice to Defendant (MDJS 305B1) to defendant(s). Make sure that they are aware of the seven issues on page two with the heading Notice to Defendant.
5. Determine most appropriate way to access property to conduct levy (must be conducted within 60 days of receiving Order of Execution).
6. Determine which pieces of property to levy upon (levy upon property of defendant in possession of another requires leaving copy with the other party as well as the defendant).
7. Service of Notice of Levy (MDJS 306B) and other related forms to defendant(s).

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8. Conduct levy by describing each piece of property to be sold - Schedule of Property Levied Upon and Set Aside (MDJS 306A1) and return forms with Executing Officer's Return (MDJS 305C). Levy upon tangible, nonperishable personal property. You cannot levy upon or sell real property, intangible property, or perishable property on executions from an MDJ.
9. Determine exemption of goods levied upon (cash or goods - \$300 as specified in 42 Pa. C.S.A. 8123).
10. Set aside exempt property - enough to equal the exemption (defendant has up to two days to appeal property set aside).
11. Complete Notice of Execution Sale (MDJS 309A).
12. Post Notice of Sale in public places and mail copy of Notice of Sale and other appropriate forms to plaintiff and defendant. This must be accomplished at least six days before sale date.

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13. Ensure legal timeline is followed by tracking number of days between activities.
14. Gain entrance to levied-upon goods.
15. Inventory levied-upon goods to ensure all goods are present.
16. Conduct sale of levied-upon goods (includes transfer of property).
17. Complete Bill of Sale, including Proposed Schedule of Distribution (MDJS 309B).
18. File MDJS 309B with the MDJ within five days of sale.
19. Collect proceeds of sale and deliver to plaintiff(s) as per Proposed Schedule of Distribution unless written exceptions are filed within 10 days after filing of proposed schedule.
20. Complete after-sale paperwork and return to MDJ.
21. Ensure legal timeline is followed by tracking number of days between activities.

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Enforcement of Judgments Rendered by Magisterial District Judges for the Payment of Money

Given the amount of information presented, let's review some common questions related to an Order of Execution that have been posed by constables.

Order of Execution - Levy

1. Can marital property be levied upon in Pa.?

Yes, but it is up to the defendant to file a motion to quash the levy of personal property on the grounds that it is all jointly owned. This takes the form of the defendant filing a third party claim with the court.

The filing of a third party claim stops the sale, and the hearing on the claim must be held by the court within five days.

2. What happens if the personal property levied upon does not sell for a sum sufficient to satisfy the judgment?

Proceeds are forwarded to the plaintiff, but there remains a judgment against the defendant for the amount remaining on the judgment after the

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proceeds are received.

3. What is *in custodia legis*?

In the custody of the law; the taking, seizing or holding of something by lawful authority.

4. What is *nulla bona return*?

No nonexempt personal property was found that could be levied upon.

5. What is a levy?

Seizure of the defendant's nonexempt tangible personal property.

6. Is actual seizure of property commonplace in Pa.? *No.*

7. Must a levy be conducted prior to the sale of the property? *Yes.*

8. What information should be included to specifically describe the property to be levied upon?

- *Make*
- *Model Number*
- *Serial Number*
- *Color*
- *Quantity*
- *Quality (if appropriate)*
- *Year (if appropriate)*
- *If from a set, is it complete? (as an example: golf clubs)*
- *Size (TV)*
- *Men's or Women's*
- *(as an example: golf clubs)*

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9. Can a vehicle be levied upon in Pa.? *Yes.*
10. In Pa., is it a crime to move, use or damage levied-upon property? *Yes.*
11. Can intangible personal property, such as a company logo, be levied upon? *No.*
12. How do you determine the cost basis of personal property?

A general "rule of thumb" is 25% of the original value of the item. However, some items may be higher, such as antiques or items from a business. It is recommended that you be reasonable and fair when assigning value to items being levied upon.

13. When you levy upon a vehicle, should you first determine the owner via the vehicle's registration? *Yes.*
14. In Pa., can you levy upon funds in a passbook savings account? *Yes.*
15. Can you levy upon a railroad retirement account?
No, it is exempt per Pa. and federal law.

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16. Can defendant deny you access to his home and property thus blocking your attempt to levy upon his personal property? *Yes.*

17. If your attempt to enter a home to conduct a levy is denied by the property owner, will the court permit you to enter forcibly? *No.*

18. What can be levied upon and eventually sold (via an Order of Execution)?

A 2007 Mercedes SL-350 owned by plaintiff - *Yes*

A diamond ring - *Yes*

A surround-sound home theater system - *Yes*

Furniture - *Yes*

A Coleman Camper owned by you and your wife - *No. If a third party property claim is filed on marital property in Pa., it cannot be sold primarily because it is owned by a third party (this is true only if the judgment is against only one spouse). However, from a constable's perspective it is better to levy upon the property (camper) and let the plaintiff appeal the ownership to the court via a third party property claim to verify that the camper is indeed marital property.*

A Bass Tracker pontoon boat - *Yes*

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A utility trailer - Yes

A John Deere L-135 lawn tractor - Yes

A Craftsman drill press - Yes

A Craftsman miter saw - Yes

A Honda Goldwing motorcycle - Yes

A Toro rear-bagging lawn mower - Yes

A Stihl chain saw - Yes

Various shovels, rakes and other lawn tools -
Yes

A Stihl chain saw used in the defendant's logging company - *No. Under Pa. and federal law, equipment is exempt. Equipment is defined as "tools of the trade," i.e. tangible property (other than land and buildings) that is used in the operation of a business and includes devices (such as a pager), machines (such as a lawn mower), tools (such as a shovel) and vehicles. Other similar equipment may be in the possession of a mechanic, farmer, or professional band.*

Frequently
Asked
Questions

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How about a printer in the office of the defendant's logging company. Can it be levied upon and eventually sold? - *Yes, as this could be argued that it really isn't a tool of the trade per se specific to the logging industry.*

19. How do major exemptions under Pa. and federal law affect the \$300 personal exemption?

If the major exemption is personal in nature, such as clothing, bibles and school books, most counties will deduct the value of those items from the \$300 exemption.

20. What alternatives do you have to conduct a levy if you are not permitted to enter the residence?

The only option you have, and this may turn out to be very time- and/or cost-prohibitive, is to wait until you can levy upon property left outside the home in public view, such as a car in the driveway, a lawn tractor in the yard, etc. Also, that same car could be levied upon when the defendant is witnessed leaving it in public view and going into the local grocery store.

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21. When can the \$300 personal exemption be claimed?

The exemption must be established before the sale. Property worth that much can be set aside and not sold. The defendant can inform the constable what he wishes to set aside and the constable can comply if it meets the \$300 exemption limit. The defendant also can claim the exemption in cash.

22. Can the defendant claim the \$300 per sale?

Yes, the \$300 exemption is per sale and, if both the husband and wife are named as defendants (judgment debtors), some attorneys have successfully lobbied for both of them to claim the \$300 personal exemption.

Order of Execution - Sale

1. When can the sale be held once the levy is completed?

Anytime within 3 months following the levy.

2. Must the purchaser be present to bid at a sale?
Yes.

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3. Should property be sold to the highest bidder?
Yes.
4. Is only cash permitted for a purchase? *Yes.*
5. Does the personal property up for sale carry a warranty? *No.*
6. Must a Bill of Sale be provided to the purchaser? *Yes.*
7. Is the sale conducted via an oral auction to the highest bidder? *Yes.*
8. Must the personal property be present at the sale? *Yes.*
9. Is the sale open to the public? *Yes.*
10. During a sale, what happens if there are no bidders?
The sale will have to be rescheduled.
11. What if the high bidder does not make good on the bid?
The item must be put up for sale again.
12. What happens if the first sale does not produce enough money to pay the judgment?
An additional sale(s) may be held.
13. If the original purchase price of an item was \$200, for how much should it be sold? *\$50.*

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14. What is the procedure for distributing funds after a sale if the defendant had multiple judgments against his property?

Whenever there are different constables attempting to levy upon the same personal property under orders of execution issued on behalf of separate plaintiffs, the proceeds of the sale are distributed in order according to the date that each plaintiff filed a request for an order of execution in the office of the issuing MDJ.

Actions for the Recovery of Possession of Real Property-Title 246

Key Facts and Concepts

Rule 502. Venue; Commencement of the Action

The action may be brought in and only in the magisterial district where the whole or part of the real property possession of which is sought to be recovered is located.

Rule 503. Form of Complaint

The complaint shall set forth:

- The names and addresses of the parties.
- The location and the address, if any, of the real property possession of which is sought to be recovered.
- That the plaintiff/landlord is the landlord of that property.
- That he leased or rented the property to the defendant/tenant or to some other person under whom the defendant/tenant claims.
- That notice to remove was given to the defendant/tenant in accordance with law, or that no notice was required under the terms of the lease.

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- That —
 - the term for which the property was leased or rented is fully ended, or
 - a forfeiture has resulted by reason of a breach of the conditions of the lease, or
 - rent reserved and due has, upon demand, remained unsatisfied.
- That the defendant/tenant retains the real property and refuses to give up possession of the property.
- The amount of rent, if any, which remains due and unpaid on the date the complaint is filed and whatever additional rent shall remain due and unpaid at the date of the hearing, and the amount of damages, if any, claimed for injury to or unjust detention of the real property.

Rule 504. Setting the Date for Hearing; Delivery for Service

The MDJ, at the time the complaint is filed, shall:

- Set a hearing date which shall be not less than seven (7) or more than fifteen (15) days from the date the complaint is filed.

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- Insert the hearing time and date and the address of the MDJ's magisterial district in the complaint form.
- Deliver a copy of the complaint form with hearing time and date thereon to the plaintiff/landlord or his agent.
- Deliver a copy of the complaint form with hearing time and date thereon for service as hereinafter set forth, which copy shall contain the following notice:
 - If you have a defense to this complaint, you may present it at the hearing.
 - If you have a claim against the plaintiff/landlord arising out of the occupancy of the premises, which is within magisterial district court jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office before the time set for the hearing.
 - IF YOU DO NOT APPEAR AT THE HEARING, a judgment for possession and costs, and for damages and rent if claimed, may nevertheless be entered against you. A judgment against you for possession may result in YOUR EVICTION from the premises.

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Rule 506. Service of Complaint

A. The MDJ shall serve the complaint by mailing a copy of it to the defendant/tenant by first class mail and by delivering a copy of it for service to the sheriff of, or any certified constable in, the county in which the office of the MDJ is situated.

B. The officer receiving the copy shall serve it by handing it to the defendant/tenant or to an adult person in charge for the time being of the premises possession of which is sought to be recovered or, if none of the above is found, by posting it conspicuously on those premises.

C. The copy shall be served at least five days before the hearing.

Rule 507. Notation and Return of Service; Waiver of Service

The constable serving a copy of the complaint shall, at or before the time of the hearing, make proof of service on the form provided, which shall show the manner of service and the day, hour and place thereof.

Actions for the Recovery of Possession of Real Property-Title 246

Rule 508. Claim by Defendant/Tenant

A. At any time before the hearing, the defendant/tenant may file a cross-complaint on the form prescribed for civil complaints, asserting any claim against the plaintiff/landlord which arises out of the occupancy of the premises and which is within the jurisdiction of the MDJ.

B. If the defendant/tenant files such a cross-complaint, the MDJ shall set a time and date for the hearing of both complaints together, which shall not be less than 7 or more than 15 days from the filing of the defendant's/tenant's complaint.

C. The defendant's/tenant's cross-complaint shall be served on the plaintiff/landlord at least five days before the hearing.

Rule 509. Amendments to Complaint

Amendments to the complaint may be made only at the hearing in the presence of the adverse party or his representative. Amendments other than those as to form shall constitute grounds for a continuance.

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Rule 512. Hearings and Evidence

The plaintiff/landlord must appear at the hearing and present testimony in an action for the recovery of possession of real property.

Rule 513. Disputes Concerning Title

If the defendant/tenant declares in writing, on oath or affirmation, that the title to the real property is disputed and claimed by some named person other than the plaintiff/landlord and if that person also declares in writing, on oath or affirmation, that he truly believes he is entitled to the real property, the MDJ shall stay the proceedings, provided the person claiming title files in the court of common pleas of the county in which the real property is located a bond, satisfactory to that court, conditioned upon prosecuting his claim in the court of common pleas.

Rule 514. Judgment; Notice of Judgment or Dismissal and the Right to Appeal

A. If it appears at the hearing that the complaint has been proven, the MDJ shall enter judgment

Actions for the Recovery of Possession of Real Property-Title 246

against the defendant/tenant that the real property be delivered up to the plaintiff/landlord and shall enter judgment by separate entries:

- for the amount of rent, if any, which remains due,
- for the amount of damages, if any, for unjust detention,
- for the physical damages, if any, to the leasehold premises, and
- for the costs of the proceeding

less any amount found due the defendant/tenant on any cross-complaint filed by the defendant/tenant.

B. Money judgment may be rendered for the defendant/tenant on a cross-complaint filed by the defendant/tenant if the amount found due thereon exceeds any amount found due the plaintiff/landlord on the plaintiff's/landlord's complaint.

C. Judgment shall be given at the conclusion of the hearing or within three days thereafter.

D. The written notice of judgment or dismissal shall contain:

- notice of the right of the parties to appeal, the time within which the appeal must be taken, and that the appeal is to the court of common pleas;

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- notice that, except as otherwise provided in the rules, if the judgment holder elects to enter the judgment in the court of common pleas, all further process must come from the court of common pleas and no further process may be issued by the MDJ; and
- notice that unless the judgment is entered in the court of common pleas, anyone interested in the judgment may file a request for entry of satisfaction with the MDJ if the debtor pays in full, settles, or otherwise complies with the judgment.

Rule 515. Request for Order for Possession

A. If the MDJ has rendered a judgment arising out of a nonresidential lease that the real property be delivered up to the plaintiff/landlord, the plaintiff/landlord may, after the 15th day following the date of the entry of the judgment, file with the MDJ a request for an order for possession. The request shall include a statement of the judgment amount, return, and all other matters required by these rules.

B. If the MDJ has rendered a judgment arising

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out of a residential lease that the real property be delivered up to the plaintiff/landlord, the plaintiff/landlord may, after the 10th day but within 120 days following the date of the entry of the judgment, file with the MDJ a request for an order for possession. The request shall include a statement of the judgment amount, return and all other matters required by these rules.

C. In a case arising out of a residential lease, if before the plaintiff/landlord requests an order for possession,

- an appeal or writ of certiorari operates as a supersedeas; or
- proceedings in the matter are stayed pursuant to a bankruptcy proceeding; and
- the supersedeas or bankruptcy stay is subsequently stricken, dismissed, lifted, or otherwise terminated so as to allow the plaintiff/landlord to proceed to request an order for possession, the plaintiff/landlord may request an order for possession only within 120 days of the date the supersedeas or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated.

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Rule 516. Issuance and Reissuance of Order for Possession

A. Upon the timely filing of the request form, the MDJ shall issue the order for possession and shall deliver it for service and execution to the sheriff of, or any certified constable in, the county in which the office of the MDJ is situated. The order shall direct the officer executing it to deliver actual possession of the real property to the plaintiff/landlord. The MDJ shall attach a copy of the request form to the order for possession.

B. Upon written request of the plaintiff/landlord, the MDJ shall reissue an order for possession for one additional 60-day period.

Rule 517. Notation of Time of Receipt; Service of Order for Possession

The MDJ shall mail a copy of the order for possession to the defendant/tenant by first class mail and shall deliver a copy of it for service to the sheriff of, or any certified constable in, the county in which the office of the MDJ is situated. The officer receiving the order for possession shall

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note upon the form the time and date that it was received, and shall serve the order within forty-eight (48) hours by handing a copy of it to the defendant/tenant or to an adult person in charge for the time being of the premises possession of which is to be delivered or, if none of the above is found, by posting it conspicuously on those premises. The service copy of the order shall contain the following notice:

- For nonresidential leases:

If you, and all occupants of this property not authorized by the owner to be present thereon, do not vacate this property within fifteen (15) days after the date of this notice, the law authorizes me to use such force as may be necessary to enter upon the property, by the breaking in of any door or otherwise, and to eject you and all unauthorized occupants.

- For residential leases:

If you, and all occupants of this property not authorized by the owner to be present thereon, do not vacate this property within ten (10) days after the date of this notice, the law authorizes me

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to use such force as may be necessary to enter upon the property by the breaking in of any door or otherwise, and to eject you and all unauthorized occupants.

Rule 518. Satisfaction of Order by Payment of Rent and Costs

At any time before actual delivery of the real property is made in execution of the order for possession, the defendant/tenant may satisfy the order for possession by paying to the executing officer the rent actually in arrears and the costs of the proceedings. The executing officer shall give the defendant/tenant a signed receipt for any such payment.

Rule 519. Forcible Entry and Delivery of Possession

A. If, on or after the sixteenth (16th) day following the service of the order for possession arising out of a nonresidential lease, the defendant/tenant or any unauthorized occupant remains on the real property, the officer executing the order

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for possession shall use such force as may be necessary to enter upon property, by the breaking in of any door or otherwise, and to eject the defendant/tenant and any unauthorized occupant and shall deliver possession of the real property to the plaintiff/landlord or his agent.

B. If, on or after the eleventh (11th) day following the service of the order for possession in cases arising out of a residential lease, the defendant/tenant or any unauthorized occupant remains on the real property, the officer executing the order for possession shall use such force as may be necessary to enter upon the property, by the breaking in of any door or otherwise, and to eject the defendant/tenant and any unauthorized occupant and shall deliver possession of the real property to the plaintiff/landlord or his agent.

C. No order for possession may be executed after 60 days following its issuance or reissuance.

Rule 520. Officer's Return

Within five (5) business days following delivery of possession to the plaintiff/landlord or satisfaction by payment of rent in arrears and costs, the officer executing the order for possession shall make

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a return on the order for possession form. The return shall show:

- The date, time, place and manner of service of the order.
- If the order was satisfied by the payment of rent in arrears and costs by or on behalf of the defendant/tenant, the amount of that payment and its distribution.
- The time and date of any forcible entry and ejectment, or that no entry for the purpose of ejectment had to be made.
- The officer's expenses and fees.

Rule 521. Execution by Levy

If the plaintiff/landlord in an action for recovery of possession of real property obtains a judgment for damages for injury to or unjust detention of the premises, for rent remaining due and for the costs of the proceeding, or for any of these, he may obtain execution of that judgment by levy upon personal property of the defendant/tenant in accordance with the rules for the Execution of Judgments for the Payment of Money Rendered

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by Magisterial District Judges, and the form for a request for an order of execution there prescribed shall be used for this purpose.

Key Questions

1. Did I serve the copy of the complaint within the five-day time frame?
2. Did I serve the cross-complaint within the five-day time frame?
3. Did I notate time of receipt and all necessary information when serving complaints or orders?
4. Did I issue a receipt for monies paid to satisfy a complaint?
5. Is the use of force absolutely necessary for eviction?
6. Did I include all necessary information in the officer's return?

Street Sense

The documentation of the dates, times, locations, and to whom the service was made is very

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important since the times may alter the hearing date.

The notice for judgment or dismissal will be issued by the MDJ. This is important for the constable to know in the event a judgment is issued.

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Title 246—Minor Court Civil Rules
Chapter 500. Actions for the Recovery of Possession of Real Property

Job Aid

Civil Action	Timeline	Rule(s)
Filing of Complaint (Form)		Pa.R.C.P.M.D.J. # 503
MDJ schedules hearing	Not less than 7 days and not more than 15 days after plaintiff/landlord files complaint	Pa.R.C.P.M.D.J. # 504
Service of Complaint	At least 5 days before hearing	Pa.R.C.P.M.D.J. # 506
Defendant/Tenant files a counterclaim	Hearing is delayed to not less than 7 days and not more than 15 days after filing of counterclaim Note: Cross-complaint by the defendant/tenant must be served on the plaintiff/landlord at least 5 days before the hearing	Pa.R.C.P.M.D.J. # 508
MDJ enters judgment for possession, damages and/or past-due rent	At the end of the hearing or within 3 days	Pa.R.C.P.M.D.J. # 514
Plaintiff/Landlord can request an Order for Possession	For nonresidential leases after the 15th day following the date of entry of the judgment For residential leases after the 10th day but within 120 days following the date of the entry of the judgment And, within 120 days of the date the supersedeas or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated	Pa.R.C.P.M.D.J. # 515
Issuance and Reissuance of Order for Possession	Upon written request of the plaintiff/landlord one additional 60-day period can be issued And, within 120 days of the date the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated or the bankruptcy stay is lifted	Pa.R.C.P.M.D.J. # 516

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Forms Chart

Notation of Time of Receipt; Service of Order for Possession	Constable must serve the order within 48 hours upon receipt	Pa.R.C.P.M.D.J. # 517
Constable executing Order for Possession can (forcibly) remove Defendant/Tenant	For nonresidential leases on or after the 16th day following service of the order for possession, and for residential leases on or after the 11th day following the service of the order for possession, the constable may forcibly enter the property and eject the defendant/tenant and any unauthorized occupant	Pa.R.C.P.M.D.J. # 519
Officer's (Constable's) Return	Within 5 business days following delivery of possession to the plaintiff/landlord or satisfaction by payment of rent in arrears and costs	Pa.R.C.P.M.D.J. # 520

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Review of Pennsylvania Title 246 - Minor Court Civil Rules, Chapter 500. Actions for the Recovery of Real Property

1. When does the clock begin for the constable to serve the Order for Possession?

When it is received from the MDJ (Rule 517).

2. Once the Order for Possession is received by the constable, how much time does the constable have to serve the order?

Forty-eight hours (Rule 517).

3. Should a constable only collect the judgment and costs on file even if additional rent is now due?

Yes (Rule 518).

4. In the case listed above, how would the landlord/plaintiff collect the additional rent?

File a new action.

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Frequently
Asked
Questions

5. When should a constable issue a receipt?
Any time he exchanges money, whether from a defendant or to a plaintiff (Rule 518).
6. Must a hearing be held in a landlord/tenant dispute?
Yes (Rule 512).
7. According to Rule 514, the MDJ has to make two decisions regarding the results of the hearing. What are they?
A money judgment and the possession of real property.
8. PA Title 246, Rule 519 outlines the requirements for forcible entry for both non-residential and residential leases. But is forcible entry the best option for constables?

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The simple answer is no. Forcible entry should be the last resort constables consider. While forcible entry will assist in delivering possession of the real property to the plaintiff it also has the potential to present problems for the constable. Those problems include charges of destruction of personal property, accusations of theft and even claims of trespass. Even more worrisome is the effect that the passing of Castle Doctrine can have on forcible entries. While the Castle Doctrine provides language to protect a law enforcement officer engaged in the performance of his duties, it is of little solace if the resident assumed that forcible entry was that of an intruder.

CONSTABLE FIELD REFERENCE GUIDE

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