

FED (FORCIBLE ENTRY AND DETAINER) INSTRUCTIONS

An FED (Forcible Entry and Detainer) is a court action by a landlord against a tenant to remove the tenant from a rented dwelling (house, apartment, mobile home, mobile home spaces, or floating home). The landlord in this proceeding is termed the plaintiff and the tenant is termed the defendant. A judgment on an FED, if favorable to the Plaintiff (landlord), will be for restitution of the premises by a specified date, as well as for the costs of filing and serving the complaint. (To collect delinquent rent or damages, a separate Small Claim or Civil Complaint court action must be filed.) In Oregon, all evictions from residential dwellings must go through the court.

An FED action shall be filed in the county where the tenant resides.

1. Before you can file a complaint with the court you must give your tenant a notice of eviction (see section II of Complaint). These notices can be purchased from most stationary stores, or the landlord may compose the notice if (s)he includes all the information required by the Oregon statutes. **(Please Note: The court clerk can not give any legal advice, so please do not ask them to check your notice for accuracy.)**

2. Once the notice has been given to the tenant or other person holding the property, and after the time specified in the notice has passed, if the property has not been vacated the landlord may file a complaint with the court. The landlord should provide the court clerk with the following:

1. An original Complaint.
2. A copy of the notice of eviction that was served on the tenant attached to the FED complaint. The date on the notice of eviction must have passed to file a complaint.
3. The address of the premises (s)he wishes to regain possession of (if there is no street address, a detailed map will suffice);
4. A separate mailing address for defendant if appropriate;
5. A check for the filing fee. The filing fee for a residential FED is \$55.00. The filing fee for a commercial FED is \$189.00. The payment for the filing fee should be made payable to MALHEUR COUNTY STATE COURT.
6. A check for the service fee (if more than one tenant needs to be served service fees may vary). To have the sheriff, or any process server, serve the papers for you, a separate payment in the amount of \$28.00 should be made payable to the MALHEUR COUNTY SHERIFF, or the appropriate process server of \$30.00.

3. After these things have been satisfied, the court clerk will file your complaint and set a first appearance date eight (8) days from the date of filing. If the eighth day happens to fall on a weekend or holiday, the next available court date will be used. The first appearance hearing cannot be postponed unless both parties agree.

4. The court clerk will then give you the original summons and copies of the complaint to take to the sheriff for service on the defendant.

5. If the tenant moves before the court date, the plaintiff has two options:

- a. Go to court on the date specified and request a judgment for your costs of filing and service;
- b. Contact the court clerk and ask that the case be dismissed. This must be followed by a written notification, with your signature, directing the court to dismiss your complaint.

EXPLANATION OF WHAT HAPPENS AT A FIRST APPEARANCE:

If the tenant does not move out, and fails to appear at first appearance, a default judgment shall be entered in favor of the landlord for possession of the premises and costs and disbursements. If the tenant appears and the landlord fails to appear, the case will be dismissed and the tenant could be awarded costs and disbursements. If both parties fail to appear the case will be dismissed. At the first appearance, the Judge will ask the landlord and the tenant whether they have settled the matter or if the matter will be contested. If they have not yet discussed a settlement and feel one maybe reached, the Judge will ask them to do so before the case proceeds. Landlords and tenants often settle cases by agreeing on a date by which the tenant will move out, or by the tenant paying back rent and the landlord agreeing to let the tenant remain. If the landlord and tenant cannot settle the case, but neither wants a trial, the Judge may or may not give the tenant time to move. The length of time, if any, the Judge allows the tenant depends on the individual circumstances of both the landlord and tenant, and is up to the discretion of the Judge. The Judge will also sign a Judgment.

A tenant who wants a trial should ask for one at first appearance. The trial will not be held at that time, it will be scheduled as soon as the court calendar will allow. There will be a fee required from both the landlord and tenant before the trial date. If the trial is not held within 15 days, the landlord may have some additional rights which they may act upon.

At first appearance either side may ask the judge for a continuance, or time to consult a lawyer. The tenant may not receive a continuance for more that two days without depositing their due rent with the court pending outcome of the FED.

6. Once a judgment has been obtained for restitution of premises and the tenant is still occupying the residence after the date the judge ordered the landlord to have possession, the landlord may request a notice of restitution. The Court will then give a date authorizing the sheriff to physically evict the tenant if not out by that date. There is a fee of \$3.00 for the Court Clerk to issue the notice of restitution and the sheriff charges a service fee.

7. If the tenant does not move out by the notice date, the landlord may request a writ of execution. There is a fee of \$12.00 for the Court Clerk to issue the execution and the sheriff will charge a service fee. Once an execution of judgment is filed, the sheriff is authorized to physically assist the landlord in removing the tenant.

8. The fees and the process for using the FED are set forth by the Oregon State Legislature and failure to follow the procedures set forth may result in the case being dismissed.

9. If the parties have stipulated to an agreement it will be included in a judgment and the judgment will be filed with the court. If the tenant does not comply with this written agreement the landlord may file an affidavit explaining the tenant's breach of the agreement. If the tenant disagrees with the allegations the tenant may ask for a hearing within four days of the filing of the affidavit and notice to tenant. If the tenant asks for a hearing, the tenant **must provide** a written explanation why the landlord is not entitled to return

of the premises. The hearing will be scheduled by the Court Clerk. **THE ONLY ISSUE AT THE HEARING IS WHETHER THE PARTIES HAVE COMPLIED WITH THE AGREEMENT ENTERED IN THE JUDGEMENT.** Failure by the landlord to attend this hearing may result in the writ of execution being withdrawn. Failure of the tenant to attend this hearing may result in the writ of execution being enforced and tenant removed from the premises.

FREQUENTLY ASKED QUESTIONS ABOUT FILING AN FED

How does a landlord file an FED?

After delivering a written eviction notice to the tenant, a landlord can file an FED action by completing an FED summons and complaint. The summons and complaint forms are available at your local county courthouse, state courts civil office.

How is the tenant advised of the FED action?

The landlord delivers copies of the summons and complaint to be served on the tenant by the civil process office of the sheriff's department. If the landlord wishes, the summons and complaint may be served on the tenant by a private process server, who meets the requirements under Oregon law.

What if the tenant does not comply with the stipulated judgment / agreement / order? (Affidavit of Non-Compliance Process)

The landlord may file an affidavit of non-compliance. The form is available at the state courts civil office. The landlord shall provide a copy of the original stipulated judgment / agreement / order at the time of filing the affidavit of non-compliance. A judgment of restitution of premises is necessary to continue with this process. Follow local court procedures.

How do I obtain a Notice of Restitution?

If a judgment of restitution of premises is issued by the court, the landlord shall obtain a notice of restitution from the court clerk. Upon completion and issuance of the notice of restitution and payment of fees, the landlord shall arrange for service of the tenant. The notice of restitution shall order the tenant to move out of the premises, including removing all personal property, in no less than four days. After the expiration of the notice of restitution, the landlord may apply for a writ of execution of judgment of restitution, if the tenant remains in possession of the premises.

What if the tenant requesting a hearing on the affidavit of non-compliance from a stipulated judgment / agreement / order after notice of restitution has been served?

The court will schedule a hearing. The only issue at the hearing shall be whether the tenant has complied with the stipulated judgment / agreement / order. Any execution will be stayed pending the outcome of the hearing. Following the hearing, the judge's decision will determine further procedures, as necessary, including issuance of the writ of execution judgment of restitution.

How do I obtain a writ of execution?

The landlord requests a writ of execution from the state courts civil office. Upon completion and issuance of the writ of execution and payment of fees, the landlord must arrange for service through the court sheriff's department.

If You Are A Tenant It Is Strongly Suggested That You Contact An Attorney.

For further information contact:

Malheur County State Courts
Attn: FED Clerk
P O Box 670
Vale, OR 97918
Phone: (541)473-5171

Service Providers:

MALHEUR COUNTY SHERIFF'S DEPARTMENT
(for service in Malheur County only)
151 B Street West
Vale, OR 97918
Phone: 541-473-5126

OREGON LAW CENTER
35 SE 5TH AVE #1
Ontario, OR 97914
Phone: 541-889-3121

FOR MORE INFORMATION: Additional information concerning the FED process may be obtained from the Oregon State Bar Association by calling their Toll Free 24 hour Number 1-800-452-4776 Extension 7016 for Rights and Duties of Tenants and Extension 7017 for Rights and Duties of Landlords.