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Writs of Restitution

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Writs of Restitution 3
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Writs of Restitution

Reference Number: CTAS-1311

Writs of restitution are commonly known as evictions; they are another kind of process that brings with it significant and inherent risks to officer and public safety during execution. They are also among the very few civil orders that mandate use of force, where necessary, to achieve service. T.C.A. § 29-18-127.

The sheriff has not obeyed or executed a writ of restitution until he or she delivers actual possession of the premises to the plaintiff and leaves the plaintiff in quiet possession. If the tenant does not yield possession peacefully, it is the officer's duty to remove him from the premises, and the writ is not executed until he does so. *Farnsworth v. Fowler*, 31 Tenn. 1, 55 Am. Dec. 718 (1851).

The officer executing the writ is responsible only for overseeing the procedure and keeping the peace until it is finished and the plaintiff is restored to peaceful possession. Officers should not act as the plaintiff's movers. Plaintiffs are responsible for the removal and storage of the tenant's belongings.

However, it is not uncommon for a plaintiff to direct that movers simply take the tenant's property to the edge of the roadway. In either case, there may be items removed from the premises that pose a hazard to public safety, e.g., weapons, incendiary devices, firearms, prescription medications or toxic chemicals. Such items should be inventoried, secured, and held for further disposition in accordance with law. Some items of obvious value, such as cash, should also be inventoried and secured.

Some articles or substances discovered during removal of the tenant's belongings, such as child pornography or controlled substances, may have criminal implications and must be dealt with accordingly.

The proliferation of methamphetamine labs is a relatively new danger confronted by those whose duty it is to oversee or carry out evictions. Officers should be acquainted with signs that such a lab is present so the appropriate authorities can be summoned to perform decontamination procedures.

Tenants faced with the execution of a writ of restitution sometimes become agitated, hostile or belligerent, and may call for reinforcements amongst their relatives and friends, whereupon the situation usually deteriorates rapidly. In such cases, it may be prudent for officers to withdraw to a safe distance until their own reinforcements arrive. Often the mere show of force effectively deters further disruption.

If tenants or other persons on the scene become threatening, assaultive, or otherwise engage in violent conduct, and efforts to encourage reasonableness are unsuccessful or clearly futile, the officer should not hesitate to use restraints or other force as required to stabilize the situation and restore safety and order.

Occasionally an officer arriving to execute a writ of restitution discovers an unattended child or adult occupants who are intoxicated, disabled, infirm, or mentally ill. A person who cannot leave the premises safely, attend to his or her own needs, or avoid risk of serious harm if left unattended should never be abandoned. If no responsible person is available to take charge of such an individual, the appropriate social services or other agency must be contacted for assistance. An officer who abandons an obviously incompetent individual who subsequently comes to serious harm may be found culpable for negligence.

While unrelated to public or officer safety, it is worth mention that a surprising number of actions filed related to writs of restitution arise because the deputies and plaintiff's movers enter the wrong residence and remove the property while the owner or occupant is away. Even if the property is put back in place undamaged and no locks, doors, or fixtures are broken in the process, this is an error with considerable tort liability and constitutional implications. A claim for damages by the indignant, embarrassed owner, whose constitutional rights to privacy and due process have been violated, is almost certain to follow.

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