

Looking Out For Your Legal Rights®

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HOUSING LAW: What Happens After Your Eviction Hearing?

THE EVICTION procedure does not end when court is over. If you lost your case in the summary eviction hearing, the judge will have entered a judgment for possession. This allows the landlord to apply to the court for the issuance of the warrant for removal to have you evicted or removed from the property. There are still certain steps the landlord must follow to actually have you removed from your apartment or house, and this removal procedure takes time. Also, during this time, there are opportunities for the tenant to avoid eviction altogether or to get more time to move out. The judgment for possession does not allow the landlord to garnish your wages or attach any bank accounts you may have.

After you receive the warrant for removal, you have at least three days to leave your apartment.

Note: You will not be locked out on the day of the hearing. You will not have to leave the apartment until after you receive the warrant for removal. After you receive the warrant for removal, you have at least three days to leave your apartment. The three days do not include weekends or legal holidays.

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Warrant for removal

The warrant for removal is an order from the judge telling the Special Civil Part court officer to evict you. The landlord must send proof of the judgment to the court clerk, and the court clerk will issue a warrant for removal to the court officer. The law does not allow the warrant for removal to be issued by the court clerk until at least three business days after the judge enters a judgment for possession or an order of eviction. The three-day period is the legal amount of time a landlord must wait to start the process of removing you after the judge orders an eviction.

When the court officer gets the warrant for removal from the court clerk, the court officer then serves a copy of the warrant on the tenant. The warrant states that the tenant has three choices:

1. Move out within three days to avoid being evicted by the court officer. The three days do not include weekends or legal holidays. The legal cite to this case is N.J.S.A. 2A:42-10.16.
2. Contest the warrant. This means asking for a new court date so that you can show why you should not be

evicted and the warrant should be stopped. Your rent payments must be up to date in order to do this.

3. Be evicted by the court officer. This means that the court officer will come to your apartment or house and remove you from the premises.

Note: Unless the landlord and tenant agree in writing to a longer time frame, the landlord must ask the court clerk to issue a warrant for removal within 30 days of getting the judgment. If the landlord waits longer than 30 days, the landlord will have to notify the tenant and go back to court to get permission to have the warrant issued. The same thing is true if the landlord does not ask the court officer to lock the tenant out within 30 days of the service of the warrant on the tenant by the court officer. The landlord will have to notify the tenant and go back to court to get permission to have the court officer complete the eviction.

If the court officer evicts you

If you do not voluntarily leave the apartment or you do not contest the warrant, the court officer will come to your

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apartment or house and evict you. If you are at home at the time, the court officer will put you out and padlock the door. The court officer may also remove your things from the house or apartment and have them put on the curb before locking the door.

The warrant gives the court officer power to use force or arrest if you try to stop the eviction. This act is legal in New Jersey. It is important that you leave the premises peaceably. By all means, do not argue or fight with the court officer.

Note! Even if the court officer locks you out, it is illegal for a landlord to hold or take your clothing or furniture to force you to pay rent. This act is illegal, even if you owe the rent. Cite: N.J.S.A. 2A:33-1.

Staying the warrant for removal—getting more time to move

By agreement with the landlord. After a judgment for possession has been entered, and even after a warrant for removal has been served, a tenant may still try to make an agreement with the landlord. If the landlord does agree, make sure the agreement is in writing and that a copy is filed with the court.

Going to court. Whenever you go to court to seek more time to move or to seek a stay of the warrant for removal, it is important to ask for a specific amount



If you do not voluntarily leave or you do not contest the warrant, the court officer will come to your apartment or house and evict you.

of time. Courts may not wish to give an open-ended stay.

Orders for orderly removal—stopping the lock-out to get more time to move. When you get the warrant for removal, the warrant will tell you that you will be locked out in three days, not including weekends and holidays. If you cannot be out in three days and need more time to move and have good reason, you can ask the court for more time. One way to do this is to ask the court

for an order for orderly removal. This means that the court can give you an extra seven days to move out voluntarily. The court can do this without having a court hearing. The court can allow you this time without requiring you to pay rent.

To get an order for orderly removal, you must go to the court clerk's office. Take with you your copy of the warrant. Forms for the application for orderly removal should be available in the clerk's office. You must give notice to the landlord that you are applying for an order. If the court grants an order for orderly removal, the landlord can seek to reverse it, but the landlord must give you notice. Cite: Rule 6:6-6.

If you need to stop the lockout for more than seven days in order to move out voluntarily, you will have to get a hearing date. You can do this by filing an order to show cause. To help you, forms

In certain cases you may be able to avoid being evicted, even after the judge has ordered your eviction and the warrant for removal has been served on you by the court officer.

for this should be available in the office of the clerk of the court.

Hardship stays—up to six months. The judge is allowed under law to give a tenant up to six months to stay in the rented property if certain conditions are met. This stay of the warrant for removal is called a hardship stay of eviction. To get a hardship stay, you must show that you have not been able to find any other place to live. You must also show that all of your rent has been paid, or that you are able to pay it. You must agree to pay the rent during the time the judge allows you to stay in the apartment. This means that you cannot get a hardship stay if you are evicted for nonpayment of rent, unless you can pay all of the rent that you owe and are able to pay future rent by the time you appear in court to contest the warrant for removal. In other cases, where you are evicted and your rent is current, a hardship stay can give you up to six more months to find another place to live. Cite: N.J.S.A. 2A:42-10.6.

Stays for terminally ill tenants. The law allows a judge to grant one-year stays of eviction if the tenant is terminally ill. To be eligible for this type of stay, the tenant must meet all of these conditions:

- Owe no back rent,
- Be terminally ill and so certified by a doctor,
- Have been a tenant of the landlord for at least two years before

the stay is granted, and

- Show that there is a strong chance that the tenant will not be able to find and move to another place without suffering medical harm.

This law applies to all buildings, including owner-occupied buildings. Cite: N.J.S.A. 2A:18-59.1.

How to overturn the warrant—vacating the judgment to prevent homelessness

In certain cases you may be able to avoid being evicted, even after the judge has ordered your eviction and the warrant for removal has been served on you by the court officer. Also, you may be able to get back into your apartment after the lockout. For example, you may obtain relief if:

- You did not get the summons and complaint, and the warrant for removal is the first court paper you received telling you of any legal action against you; or
- You have new proof showing that you should have won the case; or
- Your landlord told you that the case was settled and that you did not have to go to court, but the landlord then went to court and obtained a judgment for possession.

Under court rules, a judge has the power to overturn a court decision or va-

cate a judgment or order. The Supreme Court has ruled that judges can stop an eviction based on nonpayment of rent when the tenant is able to pay all of the rent due (including court costs). Such action is necessary in order to prevent tenants from becoming homeless. A court can set aside a judgment “in the interest of justice.” Even after a tenant has been evicted, a court can order a landlord to let a tenant back into the apartment. Cite: *Community Realty Management, Inc. v. Harris*, 155 N.J. 212 (1998); *Morristown Housing Authority v. Little*, 135 N.J. 274 (1994).

A formal paper, called an order to show cause or motion, must be filed with the court in order to ask the judge to set aside an eviction judgment. To set aside a judgment under this procedure, you must have all of the rent that is due, plus the landlord’s court costs. You should ask the court clerk to help you file the order to show cause or motion if you can’t get a lawyer to help you. The judge will conduct a hearing on your motion after it is filed with the court.

There are many programs—such as Emergency Assistance (EA) and the Homelessness Prevention Program (HPP)—that provide funds to certain low-income tenants to pay back rent in order to prevent eviction. (See the Homelessness section on our website, www.lsnjlaw.org.) Often, by the time a tenant learns of these programs, applies for help, and is granted assistance with back rent, the judgment for eviction has already been entered by the court and the warrant for removal may have been issued and served on the tenant. If, at this point, you offer to pay all of the rent but the landlord insists on evicting you,

you can ask the court to vacate the judgment against you and order the landlord to accept the rent. You can even file for relief (ask that the judgment against you be dismissed) after you are locked out.

The Abandoned Tenant Property Law (N.J.S.A. 2A:18-72)

Sometimes, when a tenant is evicted or leaves an apartment on a voluntary basis, the tenant leaves property behind in the apartment. If you want to go back to get the property you left behind, you should notify the landlord in writing. Be sure to tell the landlord your current address. You should also tell the landlord why you left the property and when you will be back to get it.

A landlord may dispose of a tenant’s property only if the landlord believes that the tenant is not going to try to get back into the apartment legally and has abandoned the items.

In addition, the landlord must give the tenant written notice that the landlord intends to dispose of the property. The notice must give the tenant a time period in which to claim the property. This is:

- 30 days after delivery of the landlord’s written notice; or
- 33 days after the notice is mailed, whichever comes first.

If the property is a manufactured or mobile home, the notice must give the tenant:

- 75 days from the date of delivery of the notice; or
- 78 days from the date of mailing, whichever comes first.

After notifying the tenant that he intends to sell the tenant's property, the landlord must store the property in a safe place. The tenant is required to pay a reasonable storage cost and the cost of taking the property to the storage place.

If you want your property back, you should remove it as soon as possible. The landlord may dispose of the property if the tenant does not claim the property in time. Therefore, if you receive such a notice, you should immediately notify the landlord that you intend

to reclaim the property. You should respond in writing because this will give you an extra 15 days from the time described above to get your property. If you do not notify the landlord in writing, you must remove the property in the time set out in the landlord's notice (as described above).

For information about citations, and how to get more information about a particular law, see *Finding the Law* in the Landlord-Tenant section on www.lsnjlaw.org. □

Ten Things About Wage Claims That All Workers Should Know

THE NEW JERSEY minimum wage is \$8.38 per hour and will increase to \$8.44 per hour in 2017. For overtime hours, you are entitled to an overtime rate of time and a half for hours over 40. For example, if you earn minimum wage in 2017, every hour worked over 40 hours must be compensated at a rate of \$12.66, unless you are in an exempt position. Exempt categories include executive and professionally trained workers, as well as outside sales people. Such exemptions should be applied very nar-



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rowly, however. You should contact Legal Services if you have any questions about whether you are entitled to overtime pay. If you think you have been underpaid for your work, this article lists 10 things you should know!

- 1. You can file a wage claim for wages in past years.** It can be scary to raise a wage concern while you are still working. The good news is that wage law allows you to go back two years for minimum wage and overtime violations—three years if there was a willful violation by the employer. For non-payment of promised wages, you can go back six years. The law also protects you from retaliation if you file a complaint or talk with others about wages and working conditions.
- 2. There is more than one way to file a wage claim.** Filing a complaint can be either formal or informal. For small claims, you can file on your own at the New Jersey Department of Labor. The complaint form is on the New Jersey

Just because you are being paid a salary does not mean that you are exempt from overtime and minimum wage requirements.

Department of Labor website at https://lwd.state.nj.us/labor/wagehour/wagehour_index.html. In that process, you can get a hearing with the agency. You can also get an attorney and file in either state or federal court. You can contact Legal Services for advice on the best approach for you or to see if you are eligible for help.

- 3. You can file a claim even if you do not have an exact record of hours worked.** Legally, it is the employer's responsibility to keep a record of the hours worked. If an exact record does not exist, a reasonable estimate from you of hours worked is enough to bring a claim. The U.S. Supreme Court has made it clear that in cases where records are not kept, the burden of proof rests with the employer to show that your reasonable testimony about the hours you worked is incorrect.
- 4. Larger employers cannot hide behind subcontractors in wage claims.** Sometimes an employer will use a subcontractor or multiple corporations to try to hide from collection activity for unpaid wages. Sometimes a contractor is used to shield another employer with more assets from liability. The good news is that individual owners, managers, and corporate officers can be held responsible for wage non-payment. If the business moved or changed its name, and the owner is operating a new business,

you can still file a claim against that individual owner, even if the corporate business is no longer in existence. Also, you can include both the subcontractor who didn't pay your proper wages and the larger employer they depend on in your wage claim.

- 5. Sometimes salaried employees are entitled to overtime pay.** Just because you are being paid a salary does not mean that you are exempt from overtime and minimum wage requirements. If you are doing the primary work of the business, and management is not a primary duty, you may be entitled to time and a half for hours over forty hours. It is a good idea to keep track of your hours worked, even if your employer is paying you by salary or a task rate.
- 6. Employers cannot avoid wage laws just by calling you an independent contractor.** Just because your employer says you are an independent contractor does not make it so, even if you signed a contract or form that states that. If you are supervised, or do not have an independent business, you are probably an employee. Under a test called the "ABC test", you may be considered an employee by the court even if you signed an agreement that you are an independent contractor. This is important because the rights of employees are different from the rights of contractors. Employees are entitled to mini-

mum and overtime wages, unemployment benefits, and workers compensation.

7. **You can also ask for money for damages and attorney's fees.** Under federal law, when an employer has violated wage law, you can get your unpaid wages, plus an equal amount in damages. The law also states that the employer has to pay your attorney's fees if the law is being violated.
8. **Just because you don't get paid hourly doesn't mean you are not entitled to overtime pay.** Workers are often paid on commissions, piece rates, and task rates, and these workers are usually entitled to minimum wage and overtime wages as well. Just because you aren't paid on an hourly basis, does not mean you are not entitled to overtime.
9. **Undocumented workers are entitled to the same protections as all other workers.** Wage law protects all work-

ers, regardless of status in the United States—and rightly so. Lack of protection for immigrant workers would just give unscrupulous employers more incentives to hire workers who can be abused. So regardless of status, both citizen and undocumented workers can go forward with wage claims.

10. **Help is available.** The Workers Legal Rights Project at LSNJ has experts in wage, employment, and unemployment law who can advise and represent you in wage and unemployment areas. For more information or to see if you are eligible for services, you may complete an online intake at www.lsnjlawhotline.org or call our statewide, toll-free legal hotline at 1-888-LSNJ-LAW (1-888-576-5529), Monday through Friday, between 8 a.m. and 5:30 p.m. □

*By Keith Talbot, Senior Counsel,
Legal Services of New Jersey*

New Jersey Supreme Court Ban on Routine Automobile Consent Searches

UNDER THE United States and New Jersey Constitutions, a police officer cannot search or arrest you without a good reason. A police officer has a good reason to stop your car and conduct an investigation if the police officer believes you are breaking a motor vehicle law. But a police officer cannot stop a car because of the driver's race and base an investigation on the driver's race while pretending that the reason for the stop was breaking a motor vehicle law. This illegal practice is called "racial profiling."

The New Jersey State Police's use of racial profiling to decide which cars to stop

has been the subject of court cases and hearings by the state legislature. People testified that, after cars were stopped, the state police frequently asked the driver to consent (agree) to a search. The New Jersey Supreme Court decided in a case named *State v. Carty* that a police officer cannot stop you for breaking a motor vehicle law and then ask you to agree to a search unless the police officer believes that you or your passenger are engaged in criminal activity.

In *Carty*, a state police officer stopped a car for speeding on the New Jersey Turnpike. The driver had a valid driver's

license and was legally driving the car, but he did not have the documents with him to prove this. The driver signed a form agreeing to a search of the vehicle. The form stated that the driver knew he could refuse to agree. The state trooper then frisked the driver and passenger and found that the passenger was carrying cocaine. The trial court decided that the cocaine could be used as evidence against the passenger because the driver had agreed to the search. A jury found the passenger guilty of drug possession.

A police officer can legally search a person or a person's property without a warrant if the person consents (agrees) to be searched. The New Jersey Supreme Court decided that the person's agreement was not enough to make the search lawful when a person was stopped for a motor vehicle violation. They pointed out that people might feel that they have to agree to the police officer's request even if they are told they don't have to. They also pointed out that the police had abused the practice because most people who had agreed to a search were innocent, which means that they were "embarrassed" and "inconvenienced" for no good reason. Therefore, they decided that once a police officer has finished investigating the motor vehicle violation, a police officer must have a "reasonable and articulable



Under the United States and New Jersey Constitutions, a police officer cannot search or arrest you without a good reason.

suspicion" that the driver or passenger is or has been involved in criminal activity before they ask for agreement to search the car. They also said that a police officer could not base the "suspicion" just on the driver's or passenger's "nervousness." In order to conduct a "pat down" search of your clothing, a police officer must have reason to believe that you are "armed and dangerous" or that a crime has been or is being committed.

Decision Applies to All Police Officers

Before the New Jersey Supreme Court decided *Carty*, the New Jersey State Police had already agreed not to automatically ask for consent to search cars. But the New Jersey Supreme Court's decision applies to all police officers. The Court's decision also creates a right under the New Jersey Constitution. □

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Cuáles Son Sus Derechos Legales

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Un agente de policía no puede detener un automóvil ni hacer una investigación debido a la raza del conductor y pretender que la razón para la detención fue una infracción a las leyes de tránsito.

Looking Out For Your Legal Rights: Flip over for English edition

La Corte Suprema de Nueva Jersey prohíbe la requisa de un automóvil en una situación donde se ha obtenido el consentimiento del conductor

DE ACUERDO A LAS Constituciones de los Estados Unidos y Nueva Jersey, un agente de policía no puede registrar ni arrestar a una persona si no existe una causa que justifique tal registro o arresto. Un agente de policía tiene causa justificada para parar su automóvil y llevar a cabo una investigación si dicho agente cree que usted ha quebrantado una ley del código de tránsito. Pero el agente no puede parar un vehículo ni hacer una investigación debido a la raza

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El boletín de educación jurídica para los habitantes de Nueva Jersey

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del conductor y pretender que la razón para la detención fue una infracción a las leyes de tránsito. Esto es una práctica ilegal que se conoce como “detener a una persona por su perfil racial,” en inglés *racial profiling*.

El uso, por parte de la Policía Estatal de Nueva Jersey, de los perfiles raciales para parar vehículos, ha sido el tema de casos y audiencias jurídicas llevadas a cabo por la legislatura del estado. Hubo individuos que declararon que la policía del estado, después de haber parado un vehículo, frecuentemente le pedía al conductor el consentimiento (estar de acuerdo) para requisar el automóvil. La Corte Suprema de Nueva Jersey en un caso llamado *State v. Carty* decidió que un agente de policía no puede detenerle por infringir una ley de tránsito y luego pedirle que esté de acuerdo con una



De acuerdo a las Constituciones de los Estados Unidos y Nueva Jersey, un agente de policía no puede registrar ni arrestar a una persona si no existe una causa que justifique tal registro o arresto.

requisita, a menos que el agente crea que usted o sus pasajeros están llevando a cabo una actividad delictiva.

En *Carty*, un agente de la policía estatal paró a un vehículo por exceso de velocidad en la autopista *New Jersey Turnpike*. El conductor tenía un permiso de conducir válido y estaba conduciendo legalmente el vehículo, pero no llevaba consigo los documentos para probarlo. El conductor firmó un formulario permitiendo que se registrara el vehículo. El formulario indicaba que el conductor sabía que se podía rehusar a dar el permiso. El patrullero entonces requisó al conductor y a su acompañante y descubrió que el pasajero llevaba cocaína. El tribunal de primera instancia decidió que se podía utilizar la cocaína encontrada como elemento de prueba contra el pasajero porque el conductor había consentido a la requisita. Un jurado determinó que el pasajero era

Cuáles Son Sus Derechos Legales

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culpable de la tenencia de drogas.

Un agente de policía puede legalmente registrar a una persona o sus pertenencias sin necesidad de una orden judicial si dicha persona da su consentimiento (está de acuerdo) a ser requisada. La Corte Suprema de Nueva Jersey decidió que el consentimiento de la persona no era suficiente para legitimar la requisa cuando dicha persona ha sido parada por cometer una infracción contra el código de tránsito. El tribunal destacó que la gente se puede sentir forzada a acceder a la solicitud del policía, aún si se les ha dicho que no tienen que hacerlo. De igual manera, se señaló que la policía había abusado de esta práctica, porque la mayoría de las personas que accedieron a una requisa no eran culpables, lo que quiere decir que se les “avergonzó” e “incomodó” sin haber razón alguna. Por lo tanto, se decidió que una vez el agente haya terminado de investigar la infracción de tránsito, este tiene que tener “una sospecha razonable y que pueda ser expresada” de que el conductor o el pasajero está o

ha estado involucrado en actividades delictivas antes de que dicho agente pueda pedir el consentimiento para registrar el vehículo. También dijeron que el agente no puede basar su “sospecha” sólo en el “nerviosismo” del conductor o pasajero. A fin de llevar a cabo “una inspección corporal”, el policía tiene que tener una razón para creer que usted está “armado y es peligroso” o que se ha cometido o se está cometiendo un delito.

La decisión cubre a todos los agentes de policía

Antes de que la Corte Suprema de Nueva Jersey decidiera el caso *Carty*, la Policía Estatal ya había accedido a no pedir al conductor automáticamente el consentimiento para requisar el vehículo. Pero la decisión de la Corte Suprema de Nueva Jersey rige a todos los agentes de policía. La decisión de la Corte también crea un derecho en virtud de la Constitución de Nueva Jersey. □

Este artículo fue traducido del inglés por Al Moreno, coordinador del servicio lingüístico en LSNJ.

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