



Lowndes County Magistrate Court

Legal Terms Glossary

- Action:** A court proceeding when one party prosecutes another for the protection or enforcement of a right, the prevention or correction of a wrong, or the punishment of an offense.
- Affiant:** The person who swears to an affidavit.
- Affidavit:** A written statement of facts sworn to or affirmed under oath in the presence of a notary public.
- Affirmation:** A formal declaration under penalties of perjury that a statement is true, without an oath.
- Agent for Landlord:** A person or firm that represents the interest of the landlord which includes the collection of rents.
- Answer:** The formal written response by a defendant to a statement of claim, which sets forth the grounds for his or her defense.
- Appeals:** When the Magistrate Court renders judgment, either party may appeal the decision to the State or Superior Court of Lowndes County within seven (7) days of the date of judgment. If the tenant/defendant appeals, in addition to all cost of the appeal, the tenant must pay all sums found to be due by the Magistrate Court for rent and is required to pay all future rent as it becomes due into the registry of the State or Superior Court and shall be allowed to remain in possession of the premises.
- Bail:** Security (usually in the form of money) given for the release of a criminal defendant from legal custody to ensure the defendant's future appearance on the day and time set by the court.
- Bail Bond:** A document purchased from a bondsman that is given to the court instead of money for bail. Once signed by the defendant, he or she is released from

custody on the condition that the amount stated on the bail bond will be forfeited should the defendant not appear in court at the required time.

- Bench:** The Judge's seat or the Judge, himself/herself.
- Case:** A lawsuit or judicial proceeding intended to solve a controversy between parties.
- Civil Case:** An action brought by a person or party to recover damages or property, or to force someone to honor a contract, or to protect one's civil rights.
- Cause of Action:** The facts that make the basis for a case or lawsuit.
- Counterclaim:** An independent cause of action, usually by the defendant, that opposes or offsets a previous claim made by the plaintiff.
- Constructive Eviction:** In an event where necessary repairs have not been made, within a reasonable time, after written notice to the landlord, the tenant may choose to vacate the premises. The necessary repairs must amount to such a material interference with the tenant's use of the premises as to render the premises untenable (not suitable for the tenant to remain living at the premises).
- Damages:** An award of money paid by the losing party to the winning party to compensate for losses or injury incurred.
- Demand for Possession:** In all cases where a tenant holds possession of premises over and beyond the term for which they were rented or leased, fails to pay rent when it becomes due, or is a tenant at sufferance and the landlord desires possession of the premises, the owner must make a demand for the possession of the property. Demanding payment of the rent amount may not be sufficient.
- Decision:** The determination reached by a court in any judicial proceeding that is the basis of the judgment.
- Default:** The failure of a defendant to file an answer or appear in a civil case within the prescribed time after having been properly served with a summons and statement of claim.
- Default Judgment:** A judgment made in favor of the plaintiff because of the defendant's failure to answer or appear to contest the plaintiff's claim.
- Defendant:** The accused in a criminal case or civil case, the person or organization against whom the plaintiff brings an action.
- Defense:** The defendant's facts or arguments that demonstrate why the plaintiff is not entitled to the relief requested in a civil case.
- Deposit:** A monetary amount tendered by a tenant before occupancy of the premises including damage deposits, advance rent deposits and pet deposits. A security deposit is to be applied to any damages to the rental property, normal wear and tear expected. There is a distinction between deposits and

fees, i.e., a pet fee may **not** be returnable where a pet deposit may be returnable.

Dispossessory: An action to evict a person from possession of land or rental property. [O.C.G.A. 44-7-1]

Dispossessory of a Mobile Home: If the owner of a property which has rented space for a mobile home makes a demand for possession of the property, the same procedures are followed, however, a ten (10) day stay of execution of a writ of possession is required for both a trial judgment and a default judgment. The landlord has the responsibility of removing a mobile home for which the Court has issued a writ of possession. The landlord should contact the lien holder of a mobile home prior to having it removed. The lien holder may assist in the moving of the mobile home.

Dispossessory Proceeding: A legal procedure which provides a landlord with a means to retain possession of a premises from a tenant. A dispossessory is a summary proceeding and is the only lawful manner by which a tenant may be summarily and forcibly evicted.

Docket: A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

Domicile: That place where a person has a true and permanent home. A person may have several residences but only one domicile.

Evidence: Any type of proof that is legally presented at trial through witnesses, records and/or exhibits.

Execution of Writ of Possession: When the Court issues a writ of possession the Constable must accompany the landlord to the premises to keep the peace while the landlord removes the tenant's property.

Exhibit: A document or material object produced and identified in court for the purpose of introducing it as evidence in a case. Each of these documents or objects is ordinarily given an identifying letter or number in alphabetical or numerical sequence before it is offered as evidence.

Existing Defects: A list presented to the tenant, which describes any existing defects or damages to the rented premises prior to occupancy, which is signed by both the tenant and the landlord "Before receiving any security deposit for the tenant, the landlord must deliver a list to the tenant of existing damage to the premises. The tenant has a right to retain this list [O.C.G.A. 44-7-33]".

Failure of Tenant to Pay Monies Into The Court on Appeal:

If, after an appeal is filed with the State or Superior Court, a tenant/defendant fails to make the rental payments as ordered, then the landlord may file a

motion with the Judge of the State or Superior Court for a writ of possession instanter (immediately) and regain possession of the premises.

File: To deposit in the official custody of the Clerk of the Court to enter into the files or records of a case.

Filing Fees: Money paid to the court to start a civil case.

Final Damage: A list of any damages found after an inspection of the premises at the termination of the tenants occupancy that the landlord intends to hold the tenant responsible. It is provided to the tenant and signed by both the tenant and the landlord. **Note: Both the tenant and landlord should inspect the premises together.**

- A. Landlords inspection of the premises:
 - a. Within three (3) business days after the termination of occupancy by the tenant, the landlord or his/her agent shall inspect the premises and prepare a list of any existing damages [O.C.G.A. 44-7-33(b)].
 - b. The list shall contain the estimated dollar value of such damage, which is applied against the security deposit [O.C.G.A. 44-7-33(b)]
 - c. If the tenant vacates the premises without notice to the landlord, the landlord may make the final inspection within a reasonable time [O.C.G.A. 44-7-33(b)].
- B. Tenant's inspection of premises:
 - a. The tenant has the right to inspect the premises within five days after the termination of occupancy to determine the accuracy of the landlord's list [O.C.G.A. 44-7-33(b)].
 - b. Once the landlord and tenant sign the list it is conclusive evidence of the accuracy of the list [O.C.G.A. 44-7-33(b)].
 - c. Any objections to the list by the tenant should be in writing.

Issuance of Summons: Whenever the landlord makes an affidavit for a dispossessory, a summons is then served on the tenant by the Constable.

- Jurisdiction:**
- 1) The legal authority of a court to hear and decide a case. Small Claims Court can handle civil claims up to \$15,000.00;
 - 2) The geographic area over which the court has authority to decide cases. For example, you must sue a corporation in the county where it is doing business, where it is incorporated or where the registered agent is located. [The registered agent is the party who should be served for the corporation.] Individuals must be sued in the county in which they reside; and
 - 3) The territory, subject matter or persons over which lawful authority may be exercised by a court, as determined by Constitution or statute, e.g., the Small Claims Court cannot try cases involving divorce or family matters or where the court is called upon to decide who is the legal owner of real estate.

Laches:	The failure to diligently assert a right which results in a refusal to allow relief.
Landlord:	An owner also called a "lessor", who rents out real property to a tenant, also called "lessee".
Landlord/Tenant Relationship:	An agreement, either oral or written, between a landlord and a tenant. A landlord tenant relationship must exist for a dispossessory proceeding to lie.
Landlord's Duty To Repair:	The landlord has the duty to make necessary repairs to the premises in the condition suitable for occupancy. In a residential context, the landlord is not relieved of this duty by a clause in the lease.
Landlord's Forfeiture of Claims:	Within thirty (30) days after termination of the rental agreement, the landlord must provided the damage list to the tenant and failure to do so may result in the landlords forfeiture to withhold any portion of the security deposit for damage. The landlord may also forfeit the right to bring action for damages at a later time. A landlord, or anyone in his/her immediate family, that has more than ten (10) rental units or is represented by an agent (i.e., landlord has someone to manage the rental property) who fails to return any part of a security deposit, which she or he is required to return, shall be liable for an amount equal to three (3) times the sum improperly withheld plus reasonable attorney's fees. These attorney fees are independent of any contract language.
Lawsuit:	<ol style="list-style-type: none"> 1) A legal action started by a plaintiff against a defendant based on a statement of claim that the defendant failed to perform a legal duty, which resulted in harm to the plaintiff, 2) A legal dispute brought to a court for resolution.
Lease:	An agreement for renting real property. A lease is usually written and for a set term, such as one year. A residential rental agreement can be oral and is presumed to be month-to-month.
Lien:	A claim upon property of another as security for some debt.
Minor:	A person under the age of 18 years.
Party:	One of the litigants. At the trial level, the parties are typically referred to as the plaintiff or complainant and the defendant or respondent. On appeal, they are known as the appellant and appellee.
Plaintiff:	The party bringing a civil case.
Promissory Note:	A written document by which one person promises to pay money to another.
Proof of Service:	The form filed with the court that proves the date on which the documents were formally served on a party in a court action.
Pro se:	Refers to persons who present their cases without lawyers, from the Latin for "on one's own behalf".

- Rent:** A monetary amount that is paid by the tenant to the landlord or agent for use and possession of the landlord's property on a regular basis.
- Replevin:** An action brought by the owner of items to recover possession of those items when those items were wrongfully taken or are wrongfully kept.
- Return of Security Deposit:** Within thirty (30) days after termination of the rental agreement, the landlord shall return the security deposit to the tenant. If reason exists to withhold all or a portion of the security deposit for damages, the landlord shall provide the tenant with a written statement listing the exact reason for the retention, and if it is based on damages to the premises and itemized listing and cost of each item shall be delivered to the tenant along with the difference between any sum deposited and the amount retained.
- Service of Process:** The delivery of legal documents to the opposing party, completed by an adult over the age of 18, who is not a party to the action, who swears to the date and method of delivery to recipient.
- Settlement:** An agreement reached among the parties that resolve the case at any time before court findings.
- Statement of Claim:** A written statement filed by the plaintiff that initiates a civil case, stating the wrongs allegedly committed by the defendant and requesting relief from the court.
- Statute of Limitations:** A law that sets the deadline by which parties must file suit to enforce their rights.
- Subpoena:** An official order to attend court at a stated time. The most common use of the subpoena is to summon witnesses to court for the purpose of testifying in a trial.
- Subpoena Duces Tecum:** An official order to produce documents or records at a stated place or time.
- Summons:** A notice to the defendant that an action against him or her has been commenced in the court issuing the summons and that a judgment will be taken against him or her if the statement of claim is not answered within a certain time.
- Tack And Mail:** The summons is served on the tenant by tacking a copy of the summons on the door of the premises and mailing a copy to the tenant. This occurs when no one can be found on the premises.
- Tenancy at will:** A right to occupy property for an indefinite term that is created by the owner or person in lawful possession giving permission to another person to occupy the property. Landlord must give sixty (60) days notice to the tenant to terminate the tenancy and the tenant must give the thirty (30) days notice to the landlord for termination of the tenancy. If the landlord desires to raise the rent, the landlord must give the tenant sixty (60) days notice prior to implementation of a rent increase.

Tenancy at Sufferance:

This occurs when a tenant came into possession of the property legally, but remains in possession of the property after the tenancy has been terminated. This may occur when property is bought at foreclosure and a new owner does not desire to rent the property. A tenancy at will, may be converted to a tenancy at sufferance. Once a tenancy at sufferance exists, the landlord must demand possession of the property from the tenant before filing a Dispossessory Warrant under tenancy at sufferance. A landlord must terminate the lease by the terms set out in the lease.

Tenant:

A person who rents property.

Tenant's Denial of Landlord Claim:

Claim:

Within seven (7) days from the date of service, a tenant may file an answer with the court denying the allegations contained within the landlord's affidavit for dispossessory. When a Defendant raises a legal defense, the Court will schedule a trial as soon as possible. The tenant may remain in possession of the premises pending the final outcome of the litigation. If the Court continues the case, the tenant may be required to pay the amount allegedly due, and the amounts that become due into the Court's registry until the litigation is complete.

Tenant's Duty For Defects/Damages:

The tenant has the duty to inform the landlord of any defects or damages that occur during occupancy, preferably in writing.

Tenants Failure to Deliver Premises After Demand:

If the tenant refuses or fails to deliver possession when so demanded, the landlord may then make an affidavit for a dispossessory warrant.

Tenant Remedies For Failure to Repair:

Repair:

If the tenant gives notice of a repair/defect and after a reasonable period of time the repairs have not been made, then the tenant may make the necessary repairs and hold the landlord responsible for repair cost. **The tenant may not withhold rent due to repairs/defects, but can deduct the cost of the repairs from the rent, provided the receipts for the repairs are given to the landlord.**

Tender of Payment

by Tenant:

In an action for nonpayment of rent, the tenant has the right to tender to the landlord, or the Court, all rents allegedly owed plus the cost of the dispossessory warrant. This must be done within seven (7) days of the date the tenant was served with the summons. Such a tender shall be a complete defense to the action. **(This only applies to the tenant's first dispossessory within twelve (12) months).** NOTE: THIS SAYS TENDER. IF A LANDLORD REFUSES TO ACCEPT THE PAYMENT, THE TENANT HAS A COMPLETE DEFENSE. ALTHOUGH THE TENANT STILL HAS TO PAY THE MONEY THAT SHE OR HE OWES TO THE LANDLORD, THIS WILL DEFEAT THE DISPOSSESSORY. IF THE

LANDLORD ACCEPTS, OR RETAINS WITHOUT NOTICE OF NON-ACCEPTANCE, ANY PAYMENT DURING THE RENTAL PERIOD FOR WHICH HE OR SHE IS DISPOSSESSING, HE OR SHE WAIVES THE RIGHT TO DISPOSSESS. THIS MAY OCCUR BEFORE OR AFTER THE FILING.

Testify: To give evidence under oath as a witness in a judicial proceeding.

Testimony: Evidence presented orally by witnesses during trials, under oath.

Time of Answer of Summons: The summons requires the tenant to answer orally or in writing within seven (7) days from the date of the actual service unless the seventh (7th) day is a Saturday, Sunday or legal holiday.

Warrant: A written order issued and signed by a judicial officer directing a peace officer to take specific action. Can be

- 1) an arrest warrant, i.e., one that commands a peace officer to arrest and bring before the court the person accused of an offense for the purpose of commencing legal action;
- 2) a bench warrant, i.e., a written order issued by the court from the judge or bench commanding a person's arrest because of his or her failure to appear in court;
- 3) a recall warrant, i.e., a procedure for removing from Department of Justice and state police computers information concerning cancelled warrants in order to avoid mistaken arrests; or
- 4) a search warrant, i.e., an order issued by a judge, based on a finding of probable cause, directing law enforcement officers to conduct a search of specific premises for specific persons or things and to bring them before the court.

Writ of Possession: If a tenant fails to answer the summons of dispossessory within seven (7) days from service, the court will issue a writ of possession instantter (immediately) and the Court may grant the landlord the right to file a writ of

possession and a judgment by default for all rents due (excluding tack and mail service).

- 1) If the tenant files an answer that does not constitute a valid legal defense, the Court will accept the answer as an admission and the Court may grant the landlord the right to file a writ of possession and a judgment by default for all rents due (excluding tack and mail service).
- 2) If the tenant answers and a trial is held and the tenant does not appear, the tenant's answer may be stricken and the Court may grant the landlord the right to file a writ of possession and a judgment by default for all rents due (excluding tack and mail service).
- 3) If the tenant answers and a trial is held, with all parties present, and the Court finds in favor of the landlord, then a writ of possession shall issue, however the execution of writ is stayed for a period of seven (7) days. If the landlord fails to appear at said hearing, the Court may dismiss the action.

**IN THE MAGISTRATE COURT OF LOWNDES COUNTY
STATE OF GEORGIA
FEE SCHEDULE**

Effective July 1, 2014

Pursuant to HB 1055 and O.C.G.A. 15-10-80 the following schedule of fees will be in effect:

Statement of Claims/Garnishments/Petition for Writs for Personal Property/ Interrogatory from another court

Filing fee	\$22.00
ADR Surcharge	\$10.00

Service Process	\$40.00 (Each Defendant)
Indigent Defense Program	\$15.00
Retirement Fund	<u>\$ 3.00</u>
	\$90.00 (Total 1 Defendant)
Affidavits of Dispossessory	
Filing fee	\$22.00
ADR Surcharge	\$10.00
Service Process	\$25.00
Indigent Defense Program	\$15.00
Retirement Fund	<u>\$ 3.00</u>
	\$75.00
Reservice of Unlocateable Parties (except for Dispossessory)	\$40.00 (Each Defendant)
Writ of Possession for Dispossessory and Writ of Possession for Personal Property	\$25.00
Fi. Fa. Issuance	\$ 9.00
Fi. Fa. Cancellation (Payable to Superior Court)	\$ 7.00
Nulla Bona (Payable to Magistrate Court)	\$20.00
Recording Fee (Payable to Superior Court)	\$ 7.00 (Separate checks)
Issuance of Witness Subpoena (Lowndes County Area Only)	\$10.00 (Each Person)
Interrogatories from Magistrate Court judgments	\$10.00
Interrogatories by Personal Service	\$40.00
Abandoned Motor Vehicle	\$35.50
Criminal Warrant Application	\$20.00