



County Technical Assistance Service

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Definitions for Civil Process

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily 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 e-Li material.

Sincerely,

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Definitions for Civil Process

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The definitions below include commonly used terms related to service of process. Most are condensed or simplified when compared to their meanings as “legal terms of art.” Nearly all are found in *Black’s Law Dictionary*, 7th Edition (1999), where they are more fully defined.

Action – Any judicial proceeding which, if conducted to the court’s final decision, will result in a judgment or decree. See also, “Suit.”

Attachment – The procedure whereby the court takes control of specific property that is located in the court’s jurisdiction.

Body Attachment - Locally used language for “Body Execution.” See below.

Body Execution – A court’s order to take a named person into custody, most often to bring the person before the court to pay a debt. Locally known as a “body attachment,” it is most often used when child support has not been paid as ordered.

Complaint – The pleading that initiates a civil action. It states the basis for the court’s jurisdiction, the basis for the plaintiff’s claim, and the demand for relief, i.e., damages.

Decree – The judgment of a court of equity or chancery. See also, “Judgment.”

Execution – The act of carrying out a court’s order. Also, judicial enforcement of a money judgment, most often through seizure and sale of the judgment debtor’s property.

Fieri Facias – Judicial writ directing the sheriff to satisfy a money judgment from the debtor’s property. A form of execution usually referred to simply as an execution.

Foreign Judgment – Any judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in Tennessee.

Garnishment – An order to a third party, such as an employer, to turn over a debtor’s property (such as wages or bank accounts) held by the third party.

Indemnity Bond – A bond given by the plaintiff to protect the sheriff or other officer against all damages and costs in cases where there is a dispute regarding the title to the property upon which the sheriff is executing the levy.

Injunction – A court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury.

Instanter Subpoena – A writ commanding the person to whom it is directed to appear before the court immediately.

Judgment – The official decision of a court of law upon the rights and claims of the parties to an action.

Judgment Creditor – A person having a legal right to enforce execution of a judgment for a specific sum of money.

Judgment Debtor – A person against whom a money judgment has been entered but not yet satisfied.

Levy – The court ordered seizure and sale of real or personal property or the money obtained from the sale, usually in order to satisfy a judgment. See also, “Levy of execution.”

Levy of Execution – See “Levy.”

“Not Found” – A return of service that signifies the defendant is believed to have left the jurisdiction for another county, state or foreign country.

“Not to Be Found in My County” – The return used when an officer cannot locate the defendant yet has no information about whether the defendant has left the jurisdiction.

Process – The means by which a defendant in a civil action is compelled to appear in court or through which a court compels compliance with its directives.

Proof of Service – An officer’s written statement of what has been done under the process issued from the court for service. If service was made, the return must identify the person served and describe how service was accomplished. If process is returned unserved, the officer must state the reason service could not be effectuated. See also, “Return of Process.”

Return of Process – See “Proof of Service.”

Sale on Execution — The procedures whereby levied real or personal property is advertised and sold to satisfy a judgment. See also, “Sheriff’s Sale.”

Sheriff’s Sale – See “Sale on Execution” above.

Subpoena – A writ that commands a person to appear before the court or other tribunal.

Subpoena Duces Tecum – A subpoena ordering the witness to appear and bring specified records or documents.

Suit – See “Action” above.

Summons – A writ or order commencing the plaintiff’s action that directs the defendant to file an answer to the complaint and to appear in court.

Unlawful Detainer – The unjustified retention of real property by one who was there first lawfully, such as a tenant, but who then refuses to vacate the premises despite the termination of the lease and the landlord’s demand for possession.

Writ - A court’s written order commanding the addressee to do or refrain from doing some specified act.

Writ of Attachment – An order directing the sheriff to seize the defendant’s property in order to satisfy a judgment.

Writ of Possession – A court’s order directing an officer to take specified property out of the defendant’s possession and deliver it to the plaintiff.

Writ of Restitution – A court’s order to the sheriff, issued after a hearing, to remove the defendant (most often a tenant), by force if necessary, from the property and restore peaceful possession of the premises to the plaintiff (most often a landlord), and to make a return within 20 days of how the officer executed the writ.

Writ of Supersedeas – A writ or bond that suspends a judgment creditor’s power to levy execution, usually pending appeal.

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