



February 3, 2023

Distinguished Members of the Judiciary Committee

From Daniel J. Bernier, representing the  
Central Maine Apartment Owners Association

*Re: LD 347 An Act Regarding In-court Appearance Requirements for Persons Authorized to Serve Eviction Notices and the Process for Serving a Writ of Possession*

I represent the Central Maine Apartment Owners Association who is joined by the Rental Housing Alliance of Southern Maine in support of LD 347.

To make it easier to understand what the bill does I have attached here copies of the various documents that are served in the process of an eviction hearing. The first two (2) documents are a 7-day notice of eviction and a 30-day notice of eviction. These are actual notices where we have redacted the names and address. You can see where the sheriff's deputy has served them. A residential eviction proceeding is begun by serving a tenant with either a 7-day notice of eviction or a 30-day notice of eviction. The legislature has created a list of reasons where a landlord may evict using a 7-day notice. If the reason is other than something that is on that list, then the landlord needs to use a 30-day notice. On the 7-day notice that I have given you, a deputy checked off that he served it in hand. Either a 7-day or a 30-day eviction notice may be served by either a sheriff's deputy, a constable, the landlord or the landlord's property manager. In serving it on the tenant, they either need to serve the tenant in hand, they can give it to someone who is of suitable age and discretion who is residing at the tenant's usual residence or they can make three (3) good faith attempts to serve it at the residence, then post it on the door and mail it first class mail to the tenant. The form gives the deputy the option of checking off which of the three (3) methods that he used for service and then signing on that. **Section 1 of LD 347, just says that if it is a sheriff's deputy who serves the notice or a constable, their signature as to having it served is sufficient and they do not need to appear in Court to testify as to how they served the notice. On the other hand, if the landlord or the landlord's property manager serves the notice, they do have to be in Court and actually testify to the service of the notice.** The practice of not requiring the sheriffs to show up to testify as to the service of the notice has been the practice for my entire thirty (30) years of practice and is still the practice followed in the Augusta, Waterville and Skowhegan Courts where I spend most of my time. In fact, it is my understanding it is the practice in virtually every Court in the State except for Lewiston. Apparently there have been some recent cases where a Lewiston District Court has deviated from the traditional practice

and required sheriff's deputies to show up and testify as to service. I have heard different things, that it was a new Judge, it was an inexperienced lawyer representing the landlords. **All LD 347 does in Section 1 is codify what has been the actual practice in eviction hearings for at least the last thirty (30) years and probably much longer than that.**

The next two (2) documents I give you are a complaint and a summons. After a tenant is served with an eviction notice and the notice expires the tenant is served with a complaint and a summons which gives them the eviction hearing date and the address of the Court that they need to appear in. A complaint and a summons need to be served by a deputy sheriff or a constable. It cannot be served by a landlord or a landlord's property manager. All legal proceedings begin with a service of a summons. This one was served by posting. You will notice on the return of service on the third page, the deputy notes that he went to the property to attempt in hand service on December 14, December 15 and December 19 and on his third attempt he posted it on the door and mailed it first class mail to the tenant. A summons may be served either in hand, or with a person of suitable age and discretion who resides at the premises, or by three (3) good faith attempts on at least two (2) different days and then posting it and mailing it to the tenant. On a summons, it is agreed in all courts that sheriff's deputies do not have to show up and testify that they served the summons. We trust deputy's signed statements that they served a summons, but not that they served a notice? That contradiction is one of the things that would be dealt with by LD 347.

**Most eviction hearings settle, to force deputies to wait around a court house on eviction days just in case a matter goes to hearing is a waste of money and law enforcement resources which achieves nothing. If we do not trust signed statements by our deputies, we have far bigger problems than evictions. I also try to get the landlords I represent to use deputies to serve their notices as then we know it is done right. The purpose of the notice is to give the tenant notice, not create technical legal problems. We should be encouraging landlords to use deputies, so we know service of the tenant is done right.**

The next document as you go through is an actual Judgment of a Forcible Entry and Detainer. This one said the judgment was entered by default which would mean the tenant did not show up to the hearing. If the tenant shows up and loses the hearing the Court will give them a copy of the judgment often that day, although some of the busier Courts will mail them the copy. If the tenant does not show up, the Court will mail them a copy of the Judgment. You will also notice that at the foot of the Judgment it says in bold letters "please note if judgment is granted to the Plaintiff the Writ of Possession shall issue seven calendar days after the judgment is entered". If tenants show up, most Judges will also explain the process of issuing the Writ of Possession to the tenant. On this particular case while it says the tenant was defaulted, the tenant was actually outside the court room before everyone was called into the court room. They had a conversation with a Pine Tree Legal lawyer, started swearing at the lawyer and then left. The Pine Tree Legal lawyer and I went into the court room and explained that the tenant had left and the Judge granted the default. I think the disagreement between the Pine Tree lawyer and the tenant was because the tenant forgot to tell the lawyer they assaulted the landlord and ripped the doors off the building. The Pine Tree lawyer thought that was valuable information the tenant should have shared with him. I agree with the Pine Tree lawyer, and he acted very professionally.

The last document that I give you is the Writ of Possession. This is the final document in the eviction proceedings. A landlord after winning an eviction hearing can obtain a Writ of Possession seven (7) days after the hearing is over. They then need the sheriff's deputy to serve the Writ of Possession. Forty-eight hours (48) after the Writ of Possession is served the sheriff's deputies will come and help the landlord remove the tenant if necessary. A Writ of Possession may only be served by a sheriff's deputy it may not be served by a constable. On this one the deputy went out on three (3) different days, January 17, January 18 and January 19 posted it at 2:40 P.M. on January 19 and mailed it first class mail. The time of posting is significant because it is forty-eight hours (48) after the posting that the tenant no longer has any rights to be on the premises. Often it happens that the tenants will not open the door when the sheriff's deputies come so they have to go out multiple times to post the writ. With the writ, the current law is that the sheriff's deputy has to go out on three (3) different days to try to attempt in hand service and then post it on the third day.

**The second section of LD 347 would change the law to say that when we get to the Writ of Possession the sheriff's deputy only has to go out once and if the tenant is not there may post it on the door and mail it to the tenant.** If you have been keeping count through this process, the tenants under the current law may force ten trips by the deputy to the apartment. Three times and mailing on the notice, three times and mailing on summons, three times and mailing on the writ and then one time to remove the tenant. That gets expensive and causes delays. Plus the tenant would have received a copy of the Judgment from the court. By the time we get to the Writ the tenant has plenty of notice of what is going on. Forcing a deputy sheriff to go out three different days to post the writ is expensive, wasteful and really does not serve a valuable purpose other than delay. Any tenant knows what is going on at this point. Most Judges are very good about explaining the writ process at the hearing. By the time you get to the writ, the tenant has received a notice of eviction, a summons with a court date and there has been a court hearing where the tenant lost.

Over the years I have heard many stories from sheriff's deputies of tenants just looking at them out the window and not opening the door forcing the sheriff's deputies to go back multiple times to post documents. That is disrespectful to our law enforcement.

Thank you for your time and consideration I urge your support for LD 347.

Very truly yours,



Daniel J. Bernier

DJB/hb  
Enclosures