



The ABCs of Eviction Proceedings

SULC Vulnerable Communities and People's Initiative
December 2022



Resources



- Loyola Pro Bono Desk Manual (being updated)
<https://law.loyno.edu/centers/gillis-long-poverty-law-center/desk-manual>
- National Housing Law Project - HUD Housing Programs (“Green Book”)
<https://library.nclc.org/>
 - Paid subscription required
- Pro Bono Net <https://www.probono.net/la/>
 - Paid subscription required
- National Housing Law Project –
 - Housing Justice Network (HJN) (free subscription required)
<https://www.nhlp.org/about/hjn/>
 - NHLP Resource Center <https://www.nhlp.org/resource-center/>
- National Low Income Housing Coalition-
 - CARES Act covered properties database - <https://nlihc.org/cares-act>
 - Other resources <http://www.nlihc.org>



Eviction Basics



- “For Cause” – La CCP 4701-4735
 1. 5 Notice to Vacate (can be waived)**
 2. Rule for Possession (no sooner than 3rd day after service)
 3. Trial (judgment for at least 24 hours)
 4. Warrant for Possession (sometimes called writ of ejection)

- “No Cause” – La CCP 4701-4735; La Civ Code 2728
 1. 10 or 30 Day Notice to Vacate (cannot be waived)
 2. Rule for Possession
 3. Trial
 4. Warrant for Possession (sometimes called writ of ejection)

** “Covered properties” under the CARES Act require 30 days’ notice for nonpayment evictions. Subsidized properties may require different notice.

+ Eviction Procedure

- Evictions are handled through “summary process” (as opposed to “ordinary process” (La. CCP 2591-2596)
 - Conducted with rapidity via Rule to Show Cause
 - Without ordinary citation and service of process
 - Exceptions filed “prior to the time assigned for” and disposed of at trial, instead of separate proceeding. No responsive pleadings to exception permitted
 - Unless otherwise provided by law, rules of ordinary procedure apply
 - No damages available. Major v. Hall, 262 La. 243; 263 So.2d 22 (1972).
 - However landlord may be able to get costs and attorney fees (but attorney fees must be specially pleaded in the 1st Circuit)

+ Eviction Venue

- City Court
 - Baton Rouge City Court
 - Baker City Court
 - Zachary City Court
 - Port Allen City Court
- Justice of the Peace Court
- *These courts do not generally have overlapping territorial jurisdiction. See La. R.S. § 13:1872(A)(1); see also Baton Rouge Plan of Government §§ 11.04 and 11.06.*
- Resources for declinatory exception of improper venue:
 - <https://voterportal.sos.la.gov/Home/AddressLogin> (statewide)
 - <https://data-ebrgis.opendata.arcgis.com/datasets/ebrgis::judicial-justice-of-the-peace/explore> (East Baton Rouge Parish)



City and Parish Court Evictions



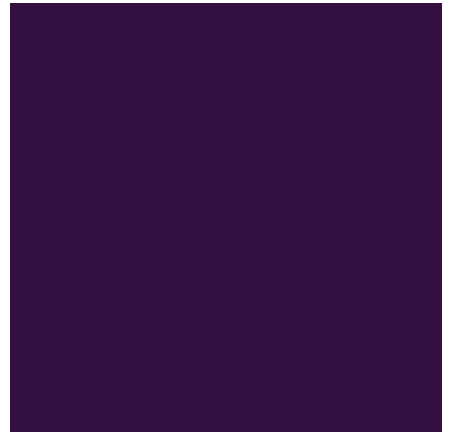
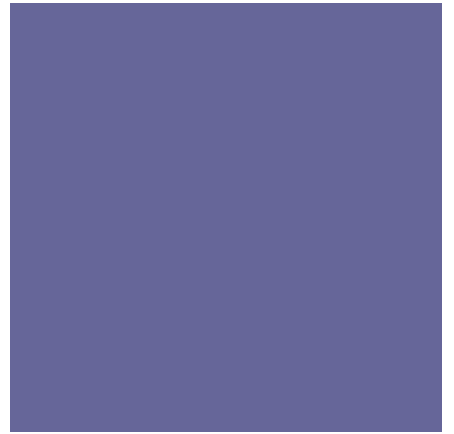
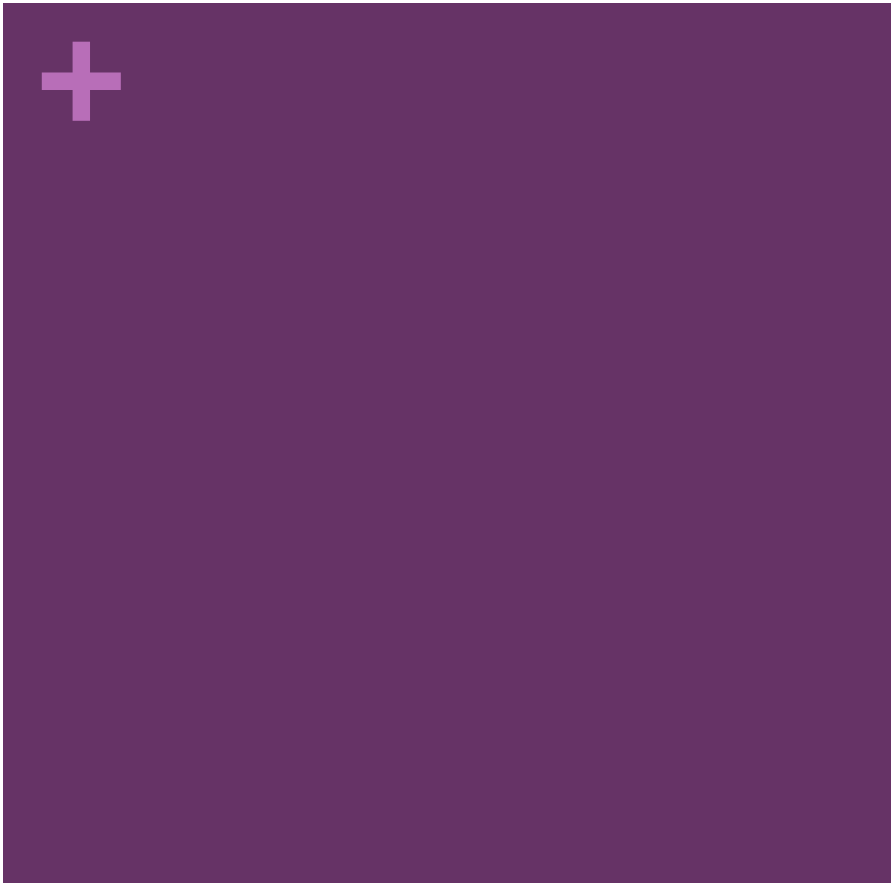
- Courts of record
- Rules of evidence apply! See La. Code Ev. 1101
 - Evidence must be authenticated
 - Hearsay is inadmissible
 - *Hous. Auth. of New Orleans v. King*, 2012-1372, pp. 6-7 (La. App. 4 Cir. 06/12/13); 119 So. 3d 839, 842 (granting *de novo* review and reversing based on lower court's reliance on unauthenticated police report containing hearsay).
- Court cannot go beyond four corners of petition and raise issues of which Defendant was not on notice.
 - La. Code Civ. P. art. 4731(a)
 - *Barker v. Loxco, Inc.*, 432 So.2d 975, 976 (La. App. 1 Cir. 1983)(enlargement of pleadings is impermissible unless Court has approved amendment of petition); cited in *200 Carondelet v. Bickham*, 2017-0328 (La. App. 4 Cir. 10/25/17); 316 So. 3d 955 (LL improperly enlarged the pleadings by raising new violations in a supplemental petition served the morning of court).



Justice of the Peace Evictions



- JOP court is not a court of record so there is no “preparing the record” for appeal.
- See La. Code Civ. P. art. 4911-4925
 - Evidentiary rules are “relaxed.” See also C.E. 1101(b)(5).
 - No discovery without leave of court
 - No written pleadings required
 - Judge may or may not be an attorney; if not attorney has no formal legal training
 - The only place court can’t be held is a bar
- Tip: Bring relevant sections of JOP manual and copies of all law.
<http://www.lajpc2.com/manual/Justice%20Court%20Manual%207th%20Edition.pdf>

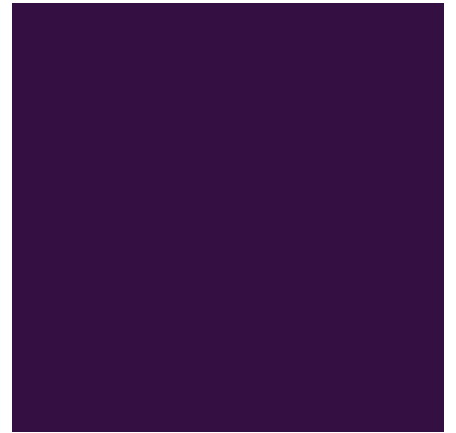
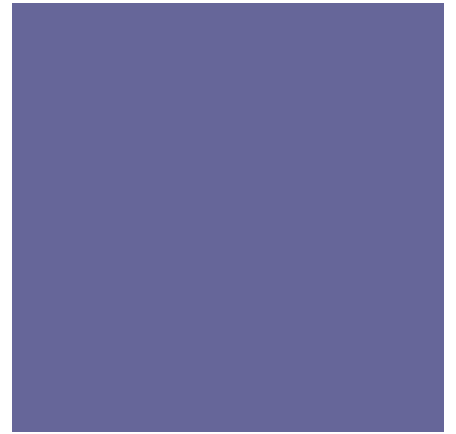
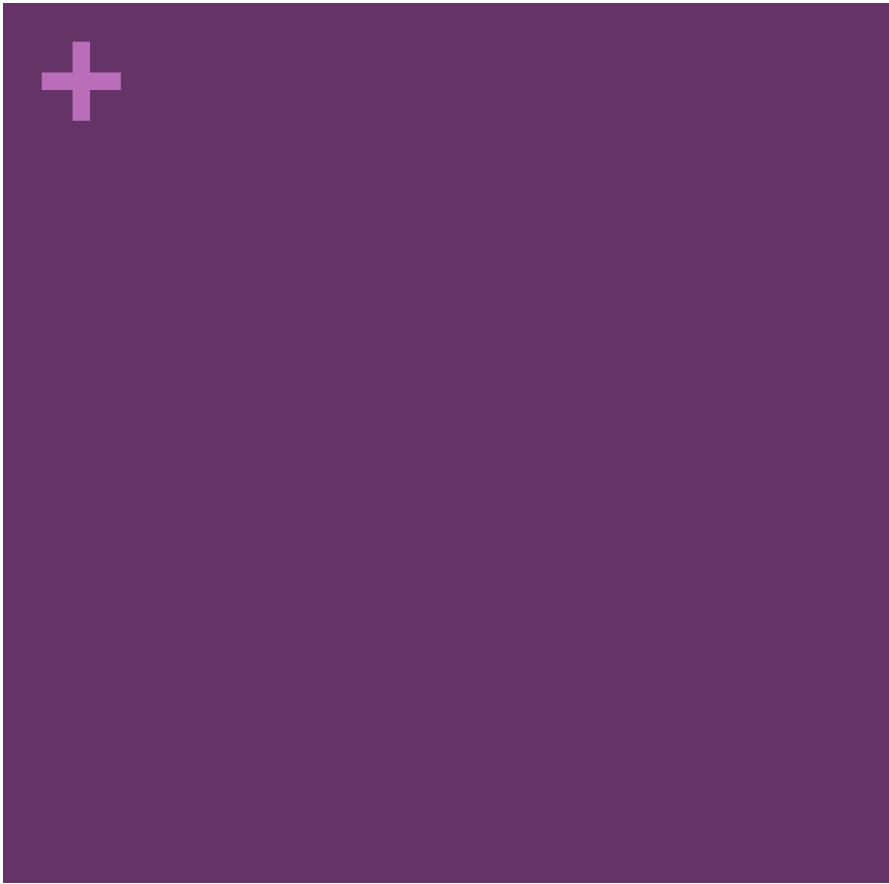


Life of an Eviction Case

+ Life of an eviction case (see handout)

- Landlord gives Tenant a Notice to Vacate (NTV)
- Landlord files for Rule for Possession
- Trial for Rule for Possession
- Trial Court Result
- Warrant for Possession/Writ of Ejection
- Execution of Judgment
- Post-Judgment Remedies





Responsive Pleadings

+ Definitions



- Exception: Procedural objection should be heard before the merits (but in Baton Rouge City Court some Judges allow Plaintiff to make case on merits first).
 - Declinatory exceptions (CCP 925) – must be pleaded prior to or in the answer (CCP 928), and are waived unless pleaded (except SMJ)
 - Dilatory exceptions (CCP 926) – must be pleaded prior to or in the answer (CCP 928), and are waived unless pleaded
 - Peremptory exception (CCP 927) – may be pleaded at any time prior to submission of case for judgment (CCP 928)
- Affirmative Defense: Yes, it's true I did that, but here's why I was legally justified in doing so.



When to file exceptions and/or answer



- In City Court always, if possible, because:
 - Written pleadings are required (absent court rule). La. Code Civ. P. art. 4901.
 - Gives opportunity for judge to review your argument before court.
 - Indicates to the Judge that you mean business.
 - Exceptions give you an opportunity to argue first.
 - There is also at least one defense to argue: judicial control.
 - **You cannot suspensively appeal unless you have filed a sworn answer.**
 - Must be filed prior to the time assigned for. La. Code Civ. P. art. 2593.
 - Local court rules place additional requirements on pleadings, such as certificates of service. See Baton Rouge City Ct. R. 5 (<https://www.brla.gov/227/Rules-of-Court>).

- Justice of the Peace Court:
 - Written pleadings are not required in JOP court. La. Code Civ. P. art. 4917(A).
 - 1st Circuit and 5th Circuits have recognized that sworn answer with affirmative defenses is not required to appeal a Justice of the Peace eviction.

+ Common exceptions and
affirmative defenses
(see handout)



+ Special Topics

- **Affirmative Defense of Judicial Control:**
 - Cancellation of leases is not favored in Louisiana law. *Hartmann v. Bank of La.*, 95-3058, p. 19 (La. 12/13/96); 702 So.2d 648 (citing *Tullier v. Tanson Enterprises, Inc.*, 359 So. 2d 654 (La. App. 1 Cir. 1978), *rev'd on other grounds*, 367 So. 2d 773 (La. 1979)).
 - A lessee's failure to pay timely does not automatically terminate a lease. *Hartmann* at p. 17 (citing *Huckabay v. Red River Waterway Com'n*, 663 So. 2d 414 (La. App. 2 Cir. 1995), *writ denied*, 667 So. 2d 529 (La. 1996)).
 - Louisiana courts have discretion to under certain circumstances to decline to grant a lessor cancellation of a lease although such right appears to be available to him. *Hartmann* at pp. 19-20.
 - Louisiana courts have discretion in an action for judicial dissolution to give an obligor in default additional time to perform. La. Civ. Code art. 2013; see La. Civ. Code arts. 2704 and 2719 (applying the dissolution articles for conventional obligations to leases).
 - **This defense is available in every eviction: find your client's good-faith efforts to pay, move out, correct violations, make repairs, or ease tensions with neighbors and plead them.**



Motions for Involuntary Dismissal



- Circumstances justifying involuntary dismissal:
 - Plaintiff fails to appear. La. Code Civ. P. art. 1672(A)(1).
 - “Upon the facts and law, the plaintiff has shown no right to relief.” La. Code Civ. P. art. 1672(B).
- Elements required to prove entitlement to eviction, *Guste Homes Resident Mgmt. Corp. v. Thomas*, 12-1493, p. 5 (La. App. 4 Cir. 05/29/13); 116 So. 3d 987, 990:
 - 1) Valid lease.
 - 2) Lease violation. See La. Civ. Code arts. 2704 (nonpayment of rent) and 2719 (other violations).
- Burden of proof is *preponderance of the evidence*.



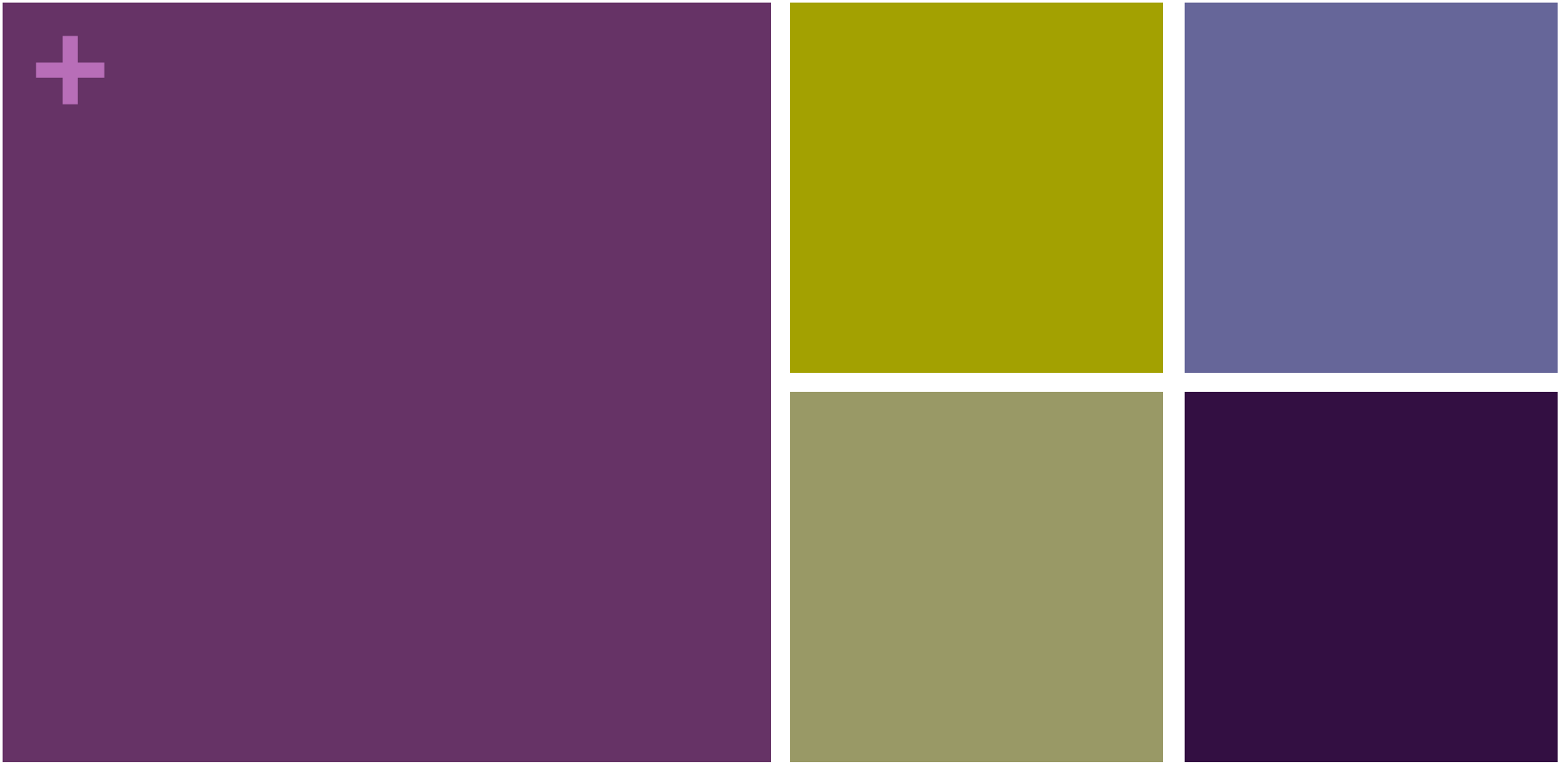
Continuances



- Discretionary grounds, La. Code Civ. P. art. 1601 (disfavored in help desk advocacy):
 - “Good ground therefor.”

- Peremptory grounds, La. Code Civ. P. art. 1602 (useful for factually-complex lease violations or federally subsidized housing):
 - If the party applying for the continuance shows that he has been unable, with the exercise of due diligence, to obtain evidence material to his case; or
 - If a material witness has absented himself without the contrivance of the party applying for the continuance.
 - Note: Courts are bound to follow the Americans with Disabilities Act, and may be required to accommodate a tenant with disabilities. *Tennessee v. Lane*, 541 U.S. 509 (2004).

- If the Court denies a peremptory continuance, **consider taking a writ.**



Post-Judgment Remedies

+ Post Judgment Actions (City Court or JOP Court)

Motion for New Trial

- Must be granted if judgment is contrary to law and evidence.
 - La. Code Civ. Proc. art. 1972.
- A new trial may be granted for good cause at Court's discretion.
 - La. Code Civ. Proc. art. 1973
- Must be applied for within 7 days of mailing or service of the notice of judgment (not including weekends).
 - La. Code Civ. Proc. art. 4907
- Note: Oral pleadings are permissible in JOP Court. Art. 4917

+ Post-Judgment Actions (City Court)

Suspensive Appeal

- A suspensive appeal stays execution of the eviction judgment.
- Application must be made to trial court for suspensive appeal by written motion within 24 hours after rendition of judgment of eviction. La. CCP 4735.
 - Rendition means a signed written judgment, not when the judgment is orally announced.
 - Suspensive appeal requires verified answer be filed with affirmative defenses. La. CCP 4735.



Post-Judgment Actions (City Court)

- Suspendive appeal requires bond (NOT deferred by IFP)
 - "The amount of the suspendive appeal bond shall be determined by the court in an amount sufficient to protect the appellee against all such damage as he may sustain as a result of the appeal." La. Code Civ. P. art. 4735.
 - Monthly rent payable when due into court registry is reasonable alternative bond for indigent tenant. *Lakewind East Apts. v. Porree*, 629 So.2d 422 (La. App. 4th Cir. 1993); *Jenkins v. Johnson*, No. 2019-0985 (La. App. 1 Cir. 07/29/19), 2019 La. App. LEXIS 1313.
 - 4th Circuit has ruled \$200 bond appropriate bond for indigent tenant with low tenant portion and tenant who paid no rent at family property. *Guste v. Thomas*, 2019-C-0988 (La. App. 4 Cir, 11/19/2019); *Lewis v. Alcee*, 2020-C-0188 (La. App. 4 Cir, 3/17/2020).
 - For subsidized tenant monthly rent is tenant portion.
 - Tenant may also post a Surety Bond. Landlord may test the sufficiency, solvency, or legality of the bond. La. Code Civ. Proc. Art. 5123
 - If the Court sets an unreasonable bond, **consider taking a writ.**



Practical and Ethical Considerations of Suspensive Appeals



- If you do not request a continuance on a case you pick up in city court, you are waiving your client's right to a suspensive appeal.
- Ensure the scope of representation is in your retainer agreement.
- Advise your client on their right to devolutive appeal.
- If a sworn answer with affirmative defenses is filed, and you choose not to represent tenant in appeal, you should:
 - Advise tenant on right to suspensive appeal, deadlines, and bond requirement;
 - If there is an appealable issue, contact SLLS immediately.

+ Post-Judgment Actions (City Court)

Devolutive Appeal

- A devolutive appeal may give rise to action for wrongful eviction. *New Orleans Hat Attack v. N.Y. Life Ins. Co.*, 95-0055, p. 4 (La. App. 4 Cir. 11/30/95); 665 So. 2d 1186, 1188.
- 10 days to take devolutive appeal from city court. La. Code Civ. P. art. 5001.
- If tenant applies for suspensive appeal, and fails to perfect by tendering bond, trial court does not have jurisdiction to convert to devolutive appeal (in eviction only). La. Code Civ. P. art. 2088(B). However, if you are within the devolutive appeal delay period you can still file a devolutive appeal (but it will not stay the eviction judgment).



Post-Judgment Actions (JOP)

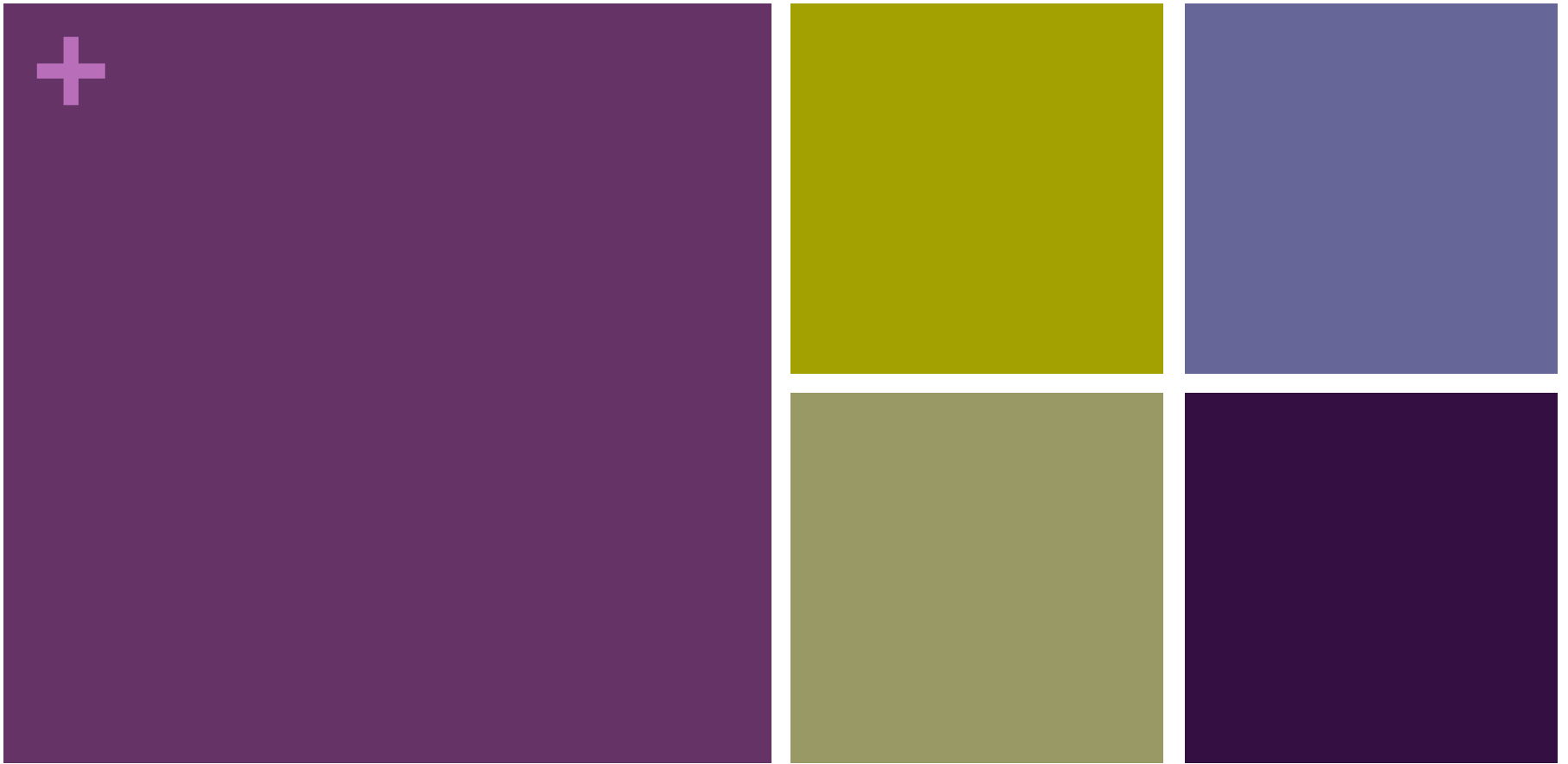


- “Appeal” from JOP court is a trial *de novo* in city/parish/district court. There is no further appeal after that (however you could apply for a writ).
- La. Code Civ. P. art. 4735 arguably does not apply to trials *de novo* from JOP court.
 - Bond need not be paid within 24 hours.
 - No responsive pleadings stating affirmative defense required.
 - Deadline to file is 15 days under La. Code Civ. P. art. 4925
 - Note: Regular suspensive appeal article still requires bond: See CCP art. 2124(B)(3).
- Which courts agree?
 - 1st Circuit –*Auguillard v. Strauss*, 2015 CW 1241 (La. App. 1 Cir 8/14/15), 2015 La. App. LEXIS 1572, *rehearing denied* (La. App. 1 Cir 4/9/15), 2015 La. App. LEXIS 1642.
 - 5th Circuit- *Lakewood Palms, LLC v. Myoshia Jennings*, 22-C-259 (La. App. 5th Cir. 6/20/2022) (not available online, see copy on intranet).

If the Court sets an unreasonable bond, **consider taking a writ.**

+ Post-judgment remedies (JOP)

- Practical considerations for filing trial *de novos*:
 - Always file within 24 hours so judgment does not execute before you file
 - Walk through your pleadings and hand deliver stay order to JOP
 - Without a stay order some JOPs will NOT stop eviction. **Consider taking a writ.**
 - JOP Spencer requires his own bond. **Consider taking a writ.**
 - With JOP Sanders you may want to bring a copy of TDN and IFP to court so you can file immediately after court.



Consent Judgments



Substance and Procedure of Consent Judgments



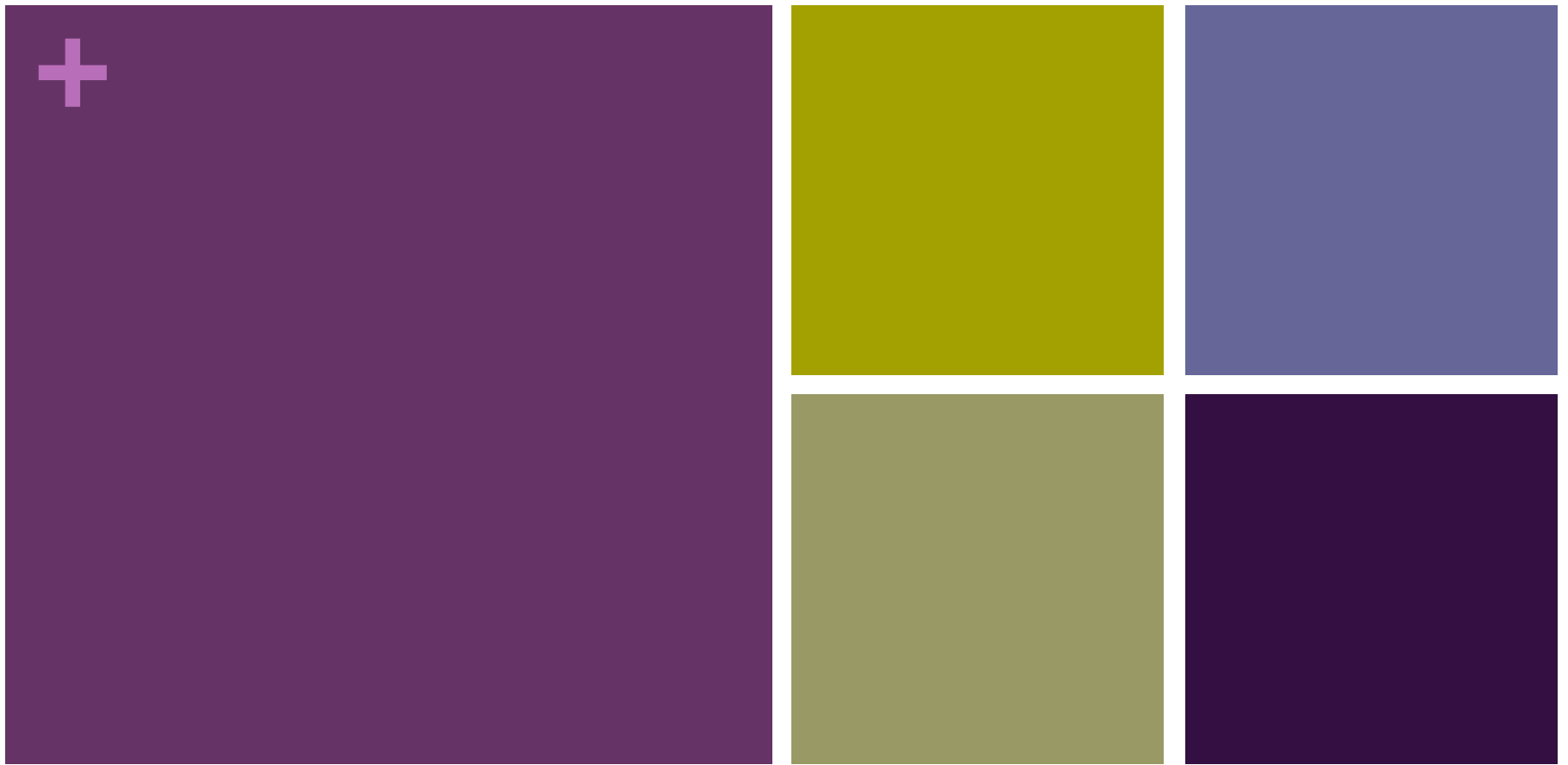
- Compromise, La. Civ. Code arts. 3071-3083:
 - “A contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship.” La. Civ. Code art. 3071.
 - Must be in written form or recited in open court. La. Civ. Code art. 3072.
 - **“A compromise settles only those differences that the parties clearly intended to settle, including the necessary consequences of what they express.”** La. Civ. Code art. 3076.
 - Appealable? *No.* La. Code Civ. P. art. 2085.
- Submission of compromise as judgment, La. Code Civ. P. art. 1916(B):
 - After recitation of the compromise in open court, the court may order the parties to submit judgment for signature.



Tips for Consent Judgments in Evictions



- Bring blanks with you to write out the consent judgment (see Baton Rouge City Court Blank One-Page Consent Judgment Form *in CLE materials*).
- **Be specific about the matters compromised** (which months of rent, date of termination, security deposit rights, payment of court costs, etc.).
- *Get to know that judge's preferred enforcement method* (phone call, ex parte motion, rule to show cause, etc.).
- Get copies for the client and for your records.



Housing Subsidies 101



Common subsidy programs in BR



- Public Housing
- Section 8 Housing Choice Voucher Program (“HCVP”)
- Project-Based Voucher Program (“PBV”)
- Section 8 Project-Based Rental Assistance
- Low-Income Housing Tax Credit
- Section 515 Rural Development



Applicable Regulations - <https://www.ecfr.gov/>



- 24 CFR 960-966 – Public Housing
- 24 CFR 982 – Housing Choice Voucher Program
- 24 CFR 983 – Project-Based Voucher Program
- 24 CFR 880-891 - Section 8 Project-Based Rental Assistance (PBRA); see also 24 CFR 247 for lease termination requirements
- 26 USC § 42 – Low Income Housing Tax Credit (LIHTC)
 - National Housing Law Project LIHTC manual
<https://www.nhlp.org/wp-content/uploads/LIHTC-2021.pdf>
- 7 CFR 3560.151-160 – Dept. of Ag Rural Development

+ Other Authority

- Lease addendums (Housing Choice Voucher, Project-Based Voucher, LIHTC, Unity PSH); HUD Form Lease
- Admissions and Continued Occupancy Policy (ACOP) (public housing)
- PHA Administrative Plan (HCVP/PBV)
- HUD Occupancy Handbook 4350.3 (check applicability!) - <https://www.hud.gov/sites/documents/43503hsgh.pdf>



+ What's the subsidy?

1. Check the lease
2. Ask the client
3. If project-based subsidy, check the National Housing Preservation Database: <https://preservationdatabase.org/>
4. Ask management and/or the subsidy provider





Public Housing



- Rent plus utilities = 30% of tenant adjusted income
- Lease automatically renews and can only be terminated for cause (serious or repeated lease violation)- 24 CFR 966.4
- Tenant has right to two-step administrative grievance process before eviction - 24 CFR 966.54; 24 CFR 966.56 (Except for certain types of criminal activity – 24 CFR 966.51)
- Notice of eviction must state - 24 C.F.R. § 966.4(1)(3):
 - Specific grounds for termination;
 - Inform the tenant of the tenant's right to make such reply as the tenant may wish;
 - Inform the tenant of the right (pursuant to § 966.4(m)) to examine PHA documents directly relevant to the termination or eviction;
 - When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedure; and
 - When grievance is not required, the notice must state that the tenant is not entitled to a grievance, and other specific items. 24 C.F.R. 966.4(1)(3)(iv).
- New regulation: all tenants must be notified that they are entitled to 30 days' notice for nonpayment eviction and of available rental assistance; termination notice must include this info - 24 CFR 966.8. See <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2021-29.pdf>



S8 Housing Choice Voucher Prog.



- Mobile voucher that can be used with private landlords if they accept it (no requirement)
- Rent for initial term calculated at 30-40% of tenant income- after initial term rent can increase upon request of landlord
- Housing Assistance Payment Contract (HAP contract) is the contract between PHA and landlord; Part C of contract is mandatory tenancy addendum:
<https://www.hud.gov/sites/dfiles/OCHCO/documents/52641A.pdf>
- Tenant cannot be charged PHA portion of rent even if unit in abatement - 24 CFR 982.310(b)
- No real good cause protection at end of lease (landlord can evict for business or economic reason) - 24 CFR 982.310(d)(2)
- Administrative hearing required before program termination, but not eviction.
- 5 day notice to vacate cannot be waived - 24 CFR 982.310(e)



Project-Based Voucher Program



- Most HCVP regulations apply- see 24 CFR 983.1-983.2
- PHA Administrative Plan also applies
- PBV tenancy addendum applies to all leases:
<https://www.hud.gov/sites/dfiles/OCHCO/documents/52530c.pdf>
- Lease automatically renews and good cause required to terminate lease; good cause can include failure to accept owner's offer of a new lease or revision - 24 CFR 983.257



Low-Income Housing Tax Credit (LIHTC)



- Developer receives a tax credit for agreeing to keep all or portion of units affordable- usually 50 or 60% AMI
- Rent is not income-based- rents are set annually by HUD at a flat rate per bedroom size that is considered affordable for a family at 50 or 60% AMI
- Often secondary subsidy like public housing or HCVP
- Good cause protection for nonrenewal (26 USC 42(h)(6)(E)(ii) and regulatory agreement; see also new tenancy addendum)



S8 Project-Based Rental Assistance



- Private companies operating property with project-based subsidy via contract with HUD
- Rent set at 30% tenant income
- Often use HUD form lease: Form HUD-90105a
 - Requires notice of termination must state tenant is entitled to a meeting with management before eviction
- Required to follow HUD Handbook 4350.3
https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3 - notice must state tenant entitled to meeting with management before eviction
- Many programs subject to lease termination requirements under 24 CFR 247; see 247.2 definitions for applicability
 - Eviction for good cause only- one or more substantial violations of the lease, or repeated minor violations that that disrupt livability of project - 24 CFR 247.3
 - Notice must (1) state reason for eviction with specificity, (2) advise tenant that she has a right to present defenses in court, and (3) be served by first class mail AND hand delivery to unit - 24 CFR 247.4
 - 30 day notice required for nonpayment, must include information about rental assistance - 24 CFR 247.4(c) and (e)

+ Dept. of Ag Rural Development



- There may be subsidized and unsubsidized units at property- “unsubsidized” units have flat below-market rent; subsidized units have deeper subsidy based on tenant income (rent at 30%)
- Right to cure lease violations before eviction – 7 CFR 3560.159
- Grievance rights, but not for lease termination – 7 CFR 3560.160
- Good cause required for termination – 7 CFR 3560.159



CARES Act 30-day notice to vacate requirement in nonpayment cases

- Federal law preempts state law under the Supremacy Clause of the United States Constitution. U.S. Const. art. VI, § 2.
- The CARES Act initially established a 120-day partial eviction moratorium on March 27 th, 2022. 15 U.S.C. § 9058(b).
- The CARES Act placed a 30-day notice to vacate requirement on virtually all properties receiving federal funds *after the moratorium expired* (federal subsidy or federally backed mortgage). 15 U.S.C. § 9058(c); see 34 U.S.C. § 12491(a) (list of covered properties).
- Connecticut (state), Washington (state), and Oklahoma (federal) courts have all recognized the 30-day notice to vacate requirement in nonpayment cases.
- Citations: *Western Haven Hous. Auth. v. Armstrong*, 2021 WL 2775095, p. 8 (Conn. Super. Ct. Mar. 16, 2021), citing *Nwagwu v. Dawkins*, BPH-C-21-5004438S (March 2, 2021, Spader, J.): *Watson v. Vici Cmty. Dev. Corp.*, No. CIV-20-1011-F, 2022 WL 910155, pp. 25-26 (W.D. Okla. Mar. 28, 2022): *Sherwood Auburn, LLC, v. Pinzon*, No. 84119-0-I, pp. 1, 8, (Wash. App. Div. 1 December 5th, 2022).
- List of multifamily properties subject to the CARES Act: <https://nlihc.org/cares-act>





Special Topics



Special Topics



- Emergency Rental Assistance Programs (ERAP):
 - Provide rental assistance to tenants through landlord/tenant agreements (LTA's), disbursing funds to landlords *in exchange for the landlords providing additional protections to tenants.*
 - Examples are EBR Emergency Solutions (East Baton Rouge Parish) and Louisiana ERAP (all parishes without a specific program)
 - Tenant protections range from preventing evictions for nonpayment up to 60 days after landlord's signature (EBR Emergency Solutions) to preventing evictions for nonpayment up to 60 days after the rental assistance term ends (Louisiana ERAP)
 - Sample LTA (EBR Emergency Solutions), pp. 66-75 of this PDF: [https://ebremergencyolutions.com/EBR ERAP Policies and Procedures.pdf](https://ebremergencyolutions.com/EBR_ERAP_Policies_and_Procedures.pdf)
 - Louisiana ERAP applications and list of specific programs: <https://erap.lacovidhousing.com/apply>

+ Special Topics

- In Forma Pauperis Affidavit, La. Code Civ. P. arts. 5181-5188:
 - Make sure it gets signed!
 - If subsidized make sure all income on there is reported to subsidy provider.
 - New IFP rules require written reasons for denial and allows judge to set for contradictory hearing. If there is a presumption of indigency written reasons must be provided to support finding that presumption is rebutted. See La. Code Civ. P. art. 5183
 - <https://www.brla.gov/DocumentCenter/View/583/Motion-to-Proceed-In-Forma-Pauperis-PDF> (Baton Rouge City Court)
 - <https://www.lasc.org/rules/dist.ct/COURTRULESAPPENDIX8.0.pdf> (Uniform Louisiana district court form)

+ Practical Realities of Help Desk Advocacy



- Number of clients per day
- Amount of time for client consultation
- Frequency of specific legal issues
- Amount of time per hearing
- Dispositions of specific judges
- Handling of post-judgment remedies



Discussion & Questions

SLLS BR Referral Information:

(225) 448-0331 (general)

(225) 448-0080, ext. 312 (housing)