

**INSTRUCTIONAL ORDER**

August 2017

Immediately

**V.5:15**

Distribution: All Employees

Subject: **TRANSIENT GUESTS, CHAPTER 509 F.S.S.**

Index as:

**Guest**

Landlord Tenants  
Lockout Complaints

**Operator**

Public Lodging Establishments  
**Transient**

**Transient Establishment**

Transient Occupancy  
**Transient Tenants/Guests**

Accreditation Standards:

Cross Reference: §83.54, F.S.S. §509.013, F.S.S. §509.092, F.S.S. §509.101, §509.141, §509.201, §509.401, F.S.S.

Replaces: I.O. V.5:15 Chapter 509, FSS. Enforcement Guidelines (August 1984)

This Order consists of the following sections:

- I. Purpose
- II. Definitions
- III. Rights of Establishment and Operator
- IV. Scenario
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**I. PURPOSE**

The purpose of this Order is to establish guidelines for fulfilling the statutory duties of Law Enforcement Officers relating to public lodging establishments. Effective enforcement requires recognition of the rights of operators of public lodging establishments while insuring that the ejection/arrest procedures under §509.141, F.S.S., relating to transient occupants, are not used to circumvent the procedural requirements of Florida’s Residential Landlord and Tenant Act.

**II. DEFINITIONS**

A. Guest – Any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment, §509.013(3), F.S.S.

B. Operator –The owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment, §509.013(2), F.S.S.

C. Public Lodging Establishment – Any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than thirty (30) days or one (1) calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. It does not include:

- 1. Public/private school/college dormitories;
- 2. Hospital, nursing home, sanitarium, or assisted living facility;

3. Any place renting four (4) units or less unless specifically held out to the public as being regularly rented to guests; condominium or timeshare units; migrant labor camp/housing; or

4. Any establishment inspected by, §509.013(4), F.S.S.

D. Transient – A guest in transient occupancy, §509.013(12), F.S.S.

E. Transient Establishment – Any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary, §509.013(10), F.S.S.

F. Transient Occupancy – Occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttal presumption that when the dwelling unit occupied is the sole residence of the guest, the occupancy is non-transient. There is a rebuttal presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient, §509.013(11), F.S.S.

### III. RIGHTS OF ESTABLISHMENT AND OPERATOR

A. Public lodging establishments are private enterprises and the operator has the right to refuse accommodations or services to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon race, creed, color, sex, physical disability, or national origin, §509.092, F.S.S.

B. The operator of any public lodging establishment may remove or cause to be removed from the establishment any guest who, while on the premises:

1. Illegally possesses or deals in controlled substances; or

2. Is intoxicated, profane, lewd or brawling; or

3. Indulges in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment; or

4. Fails to make payment of rent at the agreed upon rate by the agreed upon checkout time; or

5. Fails to check out by the time agreed upon; or

6. Who, in the opinion of the operator, is a person the continued entertainment of whom would be detrimental to such establishment.

C. In order to remove or cause a transient guest to be removed, the operator of a public lodging facility is required to comply with the requirements of §509.141, F.S.S. Those requirements and the procedure to be followed are described in this Order.

D. Any guest who remains or attempts to remain in any such establishment after being requested to leave is guilty of a misdemeanor of the second degree, §509.141(3), F.S.S.

1. However, since the statute declares it to be a misdemeanor for any undesirable guest to refuse to vacate premises after being ordered to immediately do so by the owner, the statute is penal in nature and must be strictly construed, Kent v. Wood, 235 So.2d 60 (Fla. 1st DCA 1970).

2. This means the Officer must insure that all necessary elements of the statute are present or have been complied with before an arrest can be made.

E. If any person is illegally on the premises of any public lodging establishment, the operator of such establishment may call upon any Law Enforcement Officer of this state for assistance. It is the duty of such Law Enforcement Officer, upon the request of such operator, to place under arrest and take into custody a guest who remains or attempts to remain at the establishment in the presence of the Officer, §509.141(4), F.S.S.

## V. ENFORCEMENT GUIDELINES

### A. General Considerations

1. It is important to distinguish between a transient guest in a public lodging establishment covered by Chapter 509, F.S.S. and a tenant covered by Part II, Chapter 83, the “Florida Residential Landlord and Tenant Act”, as the rights of the transient guest/tenant and operator/landlord differ significantly.

2. Chapter 509, F.S.S. establishes conditions and a procedure under which the “operator” of a public lodging establishment may recover possession of a rental unit by demanding that a “transient” guest leave the establishment. The guest may be arrested for a misdemeanor if, in the presence of a Law Enforcement Officer, they fail to comply with the demand.

3. However, under Part II of Chapter 83, the “Florida Residential Landlord and Tenant Act,” a “landlord” can recover possession of a dwelling unit only through a civil court action, voluntary surrender of the dwelling unit by the tenant, or if the tenant has abandoned the dwelling unit. Under the Act (§83.54, F.S.S.) the statutory rights and duties of the landlord and guest are enforceable ONLY by civil actions. Neither is subject to arrest for any violation of the Act. A “landlord” under the Act may not utilize the ejection/arrest procedure established for public lodging facilities under Chapter 509. Therefore, it is important to determine the status of the guest/tenant as transient or non-transient to insure that the rights of a tenant under the Act are not violated.

4. Provided the requirements of §509.141, F.S.S., are followed, the arrest of a “transient” guest would be proper. However, arrest of a tenant protected by the Act (Part II of Chapter 83, F.S.S.) could result in civil liability for the Officer and employing entity.

### B. Investigative Considerations

1. The investigation must include two inquiries:

a. **FIRST**, are the premises a “public lodging establishment” as defined in this Order, and, if so, are they licensed as such by the Division of Hotels and Restaurants of the Department of Business and Professional Regulations (hereinafter “Division”)?

b. **SECOND**, is the guest in “transient occupancy” as defined in this Order?

2. Is it a properly licensed public lodging establishment?

a. If the operator cannot produce a license from the Division, the investigation is over. Unless it is properly licensed, the operator may not utilize the ejection/arrest process set out in Chapter 509 and no further action need be taken.

b. Assuming such a license is produced, then you will need to determine whether the premises are a “public lodging establishment” as defined in §509.013(4), F.S.S. Make sure that the premises are not included among the excluded facilities.

c. In addition to being licensed by the Division, Chapter 509 requires;

1) If the operator has established rules and regulations, they must be printed in English, posted in a prominent place, and must include notice that a current copy of Chapter 509 is available for public view, §509.101(1); F.S.S., and

2) A guest register, signed by or for guests who occupy rental units within the establishment, showing the dates upon which the rental units were occupied by such guests and the rates charged for their occupancy. F.S.S. §509.101(2); and

3) If units are rented by the day or week there shall be posted in a plainly legible fashion, in a conspicuous place in each rental unit, the rates at which each such unit is rented, §509.201(1), F.S.S.

d) The determination of whether or not the premise is a public lodging should not be based on a violation of the requirements listed under this Order. However, the failure of an operator to comply with the requirements should be reported to the Division.

3. Is the guest in transient occupancy?

a. §509.034, F.S.S., provides, in part, that the provisions in §509.141, F.S.S., (ejection/arrest) apply to “transients” only and may not be used to circumvent the procedural requirements of the Florida Residential Landlord and Tenant Act. Therefore, each incident must be thoroughly investigated before law enforcement action is taken.

b. “Transient occupancy” requires that the parties (the landlord and guest) intend that the occupancy will be temporary, §509.013(11), F.S.S. For instance, a typical stay at a hotel or motel while on vacation would be transient in nature. However, not every person living in a hotel or motel is necessarily a transient guest.

c. §509.013(11), F.S.S., assists in determining the intent of the parties by providing, in part, that when the dwelling unit is the sole residence of the occupant, then there is a rebuttal presumption that the occupant is a **non-transient**. On the other hand, when the dwelling unit is not the sole residence of the occupant, then there is a rebuttal (permissible) presumption that the occupant is **transient**. “**REBUTTAL (PERMISSIBLE) PRESUMPTION**” means an **inference** which holds good unless invalidated by proof.

d. In determining whether the guest is “transient” or not, the inquiry should include, but is not necessarily limited to the following:

1) Determine whether the guest has another residence. Generally, if the guest has another home or place of residence and no additional evidence is offered, the inquiry can stop and the guest can be arrested if they refuse to leave. If, on the other hand, the guest does not have another home or place of residence, then the Officer should determine whether there is evidence to overcome the presumption that the guest is a non-transient.

a) A simple way to overcome this presumption is to ask the guest whether he/she agreed with the operator on a date upon which the guest would vacate the establishment.

b) Ask for identification which may contain an address and, if it is different from where they are currently residing, ask the guest to explain why it is different. It would be inappropriate to rely solely on the guest’s statement that the current address is the sole and exclusive residence. A thorough investigation requires that an attempt be made to determine whether the guest has some other address.

2) Determine how long the guest has resided at the current location and when they intended to leave.

3) Look at any rental agreement signed by the parties.

4) Is the guest receiving mail or are utilities (including telephone) in the guest’s name at the current location? At some other location?

5) Is the guest working in the community or just visiting?

6) Does the guest cook meals in the rental unit?

7) Does the guest receive daily maid service or other services typically offered by a transient facility (hotel/motel)?

8) Is there an agreed upon check out date/time?

9) Is there any other objective, verifiable information which would clarify the intention of the parties?

10) If the rent is being paid by a voucher issued by Pinellas County Dept. of Social Services, the landlord should have a copy of the voucher which will contain an address for the guest. This address may or may not be the same as the address where the guest is currently staying.

e. Some operators may have the guest sign a declaration that the dwelling unit is **not** their sole residence in the belief that this will ensure the rental will be treated as a transient occupancy and, therefore, be subject to the provisions of Chapter 509. However, such a declaration is not dispositive and would create only a rebuttal (permissible) presumption of transient occupancy. (Informal Attorney General Opinion to City of Orlando, December 6, 1993.)

4. Some operators may rent units on a weekly basis with the time extended for another week upon payment. While it is a question of fact whether an occupancy is transient, “It appears, however, that the use of an agreement containing multiple check out times with extensions granted by payment of a weekly rate in advance would be more in the nature of a rental agreement on a weekly basis.” (Informal Attorney General Opinion to City of Orlando, December 6, 1993.) In this case of a rental agreement on a weekly (or monthly) basis, the Florida Residential and Landlord Act would apply and the operator will have to comply with the formal requirements of the Act.

5. In a case where a subject had been living in the “Destination Motel” for about 1 ½ months and had an agreement to pay rent semi-monthly and there was no testimony that there was an agreed upon specified length of tenancy, an appellate court concluded that the motel manager should have complied with the notice provisions of the Florida Landlord Tenant Act and had no authority to terminate a tenancy by an immediate “verbal eviction” for neither creating a disturbance nor being behind in rental payments. Morse v. State, 604 So.2d 496 (Fla. 1st DCA 1992).

6. The above referenced Informal Attorney General Opinion and Morse case clearly indicate that the lack of an agreed upon check out date or specified length of tenancy, or if the check out date is extended upon payment of rent at a specific interval (weekly or semi-monthly), can be a key factor in determining the intent of the parties. It may also be an important factor in supporting or rebutting any presumption relating to the existence or non-existence of a “transient occupancy” of the rental unit.

7. If, at the conclusion of your investigation, you determine that a transient occupancy does not exist, advise the landlord of your determination and that no law enforcement action can be taken.

8. If, at the conclusion of your investigation, you determine that a transient occupancy does exist, the guest may be arrested upon compliance with the provisions of §509.141, F.S.S. as set forth in this Order.

### C. Notice and Request to Leave

1. The operator is required to give the guest notice that the establishment no longer desires to entertain the guest and shall request that the guest immediately depart from the establishment. This notice may be given orally or in writing. If given in writing it must be as follows:

“You are hereby notified that this establishment no longer desires to entertain you as its guest, and you are requested to leave at once. To remain after receipt of this notice is a misdemeanor under the laws of this state.”

2. As with any other misdemeanor, the offense must be committed in the presence of an Officer. If the guest is still present when the Officer arrives, the Officer should determine that the basis for removal of the guest is within the grounds set forth in §509.141, F.S.S., not for any statutorily improper reason, and that the guest is in “transient occupancy” of the rental unit.

3. If statutory grounds are present, an arrest may be made only if the refusal to leave, after proper notice, occurs in the Officer’s presence. This requires that oral notice to leave, or delivery of the appropriate written notice, occur within the presence of the Officer. Assuming all necessary factors are present, refusal to leave after receiving notice in the presence of the Officer constitutes a misdemeanor pursuant to §509.141(3)&(4), F.S.S.

a. **NOTE:** A Law Enforcement Officer must first place the undesirable person under arrest before physically removing the guest from the premises. Opinion of the Attorney General, 072-134, April 13, 1972. There is no statutory authority for a Law Enforcement Officer to physically evict/eject a guest from the premises absent an arrest.

4. If the guest has paid in advance, the establishment shall, at the time notice is given, tender to the guest the unused portion of the advanced payment. If the operator fails to tender repayment of the unused portion of the advanced payment at the time notice is given in the presence of the Officer, no arrest should be made.

a. **NOTE:** Although the guest may be paying a weekly rate that is less than the actual daily rate, an operator may desire to calculate the refund based on the higher daily rate. Although you cannot compel the operator to refund any specific amount, any dispute over the amount of refund should be documented in your report.

b. **NOTE:** If rent has been paid by a voucher from the Pinellas County Dept. of Social Services, the operator is not required to tender the unused portion of the voucher to the guest. The Department of Social Services will seek reimbursement or credit.

c. If an arrest is made, the Officer should fully document the incident in a police report.

d. **NOTE:** While guests have a right to have visitors, the operator has the right to have that visitor ejected if they engage in conduct which would fit the statutory criteria under which a transient guest could be ejected. In the case of a disorderly visitor who refuses to leave the Officer need only be concerned with the notice aspect of F.S.S. §509.141. As with a guest, the offense must be committed in the presence of the Officer.

### D. Operator’s Right To Lock Out (§509.401, F.S.S.)

1. Unlike a landlord covered by the Florida Residential Landlord & Tenant Act, an operator of a public lodging establishment may lock out a guest. However, F.S.S. §509.401 provides that this may be done only if, upon a reasonable determination by the operator, a guest has accumulated a large outstanding account at such establishment. The purpose of the lock out is to require the guest to confront the operator to arrange payment. (The statute does not mandate immediate payment, only that payment be is arranged.) The arrangement must be in writing, and a copy must be furnished to the guest.

2. Once such an arrangement is made, the operator is required by statute to permit the guest unrestricted access to the guest's rental unit.

a. **NOTE:** During a lock out, and prior to arranging for payment, the statute requires that the operator permit the guest to remove from the rental unit items of personal property that are essential to the health of the guest. This would include necessary medication, personal sanitation items, warm clothing during the winter, important documents, and similar items depending on the particular case and circumstances. While there is no criminal penalty for an operator failing to comply with this provision, an Officer should encourage compliance and document any non-compliance in any applicable police report.

E. Recommendation

If an Officer has a reasonable doubt that the guest is in "transient occupancy", the operator should be informed that the eviction process in the Florida Residential Landlord and Tenant Act should be pursued and that the guest will not be arrested. If appropriate, a Supervisor should be contacted. Regardless of the decision made, the facts upon which the determination is made should be thoroughly documented in a report.

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