



## CLEVELAND MUNICIPAL COURT HOUSING DIVISION JUDGE CHERYL M. WILTSHERE

### Common Questions: *Code Violation Cases*

#### **1. I received a summons and complaint for a Housing Code violation. Is this a criminal case?**

Yes. Complaints filed by the City of Cleveland for alleged violations of the City's Health, Housing, Building, Fire or Safety Codes are criminal, misdemeanor cases.

#### **2. Can I be sentenced to jail in a code violation case?**

Yes. The maximum penalty for a first-degree misdemeanor in Cleveland is a \$1000 fine and 180 days in jail. Each day a property is found to be in non-compliance with the City code represents a separate offense for which the defendant may receive the maximum penalty. The maximum penalty for a minor misdemeanor (a ticketed offense) is a \$100 fine. In addition, the sentence for a first-degree misdemeanor may include Court-supervised probation or a specified number of community service hours to perform.

#### **3. Do I need an attorney?**

As a defendant in a criminal case, you have the right to be represented by an attorney, and the right to a reasonable postponement of your case to allow you to hire one. If the court determines that you cannot afford an attorney, the court will arrange to have an attorney assigned to represent you at no cost. You must let the Judge know at the beginning of your hearing if you want an attorney but cannot afford one.

While you have the right to be represented by an attorney, you are not required to have one. Many defendants appear without an attorney, called appearing "pro se." You may wish to consult with an attorney before your hearing to decide whether you would like an attorney to appear with you in court.

#### **4. What factors does the Judge consider when sentencing a defendant for code violations?**

In sentencing a defendant for code violations, the Judge considers a number of factors. These may include the nature of the violations, the severity of the violations, the length of time the violations have existed, the attempts made by the defendant to remedy the violations, the cost of repair of the violations, and whether the repairs have been completed. The Judge may also consider whether the premises are owner-occupied or rental property. The Judge may consider the defendant's income, and if the premises are rental property, the number of units occupied, and the rent being collected. The Judge will consider the recommendation of the City prosecutor regarding the sentence, and may consider input from other interested parties, including neighbors. The ultimate sentence, however, is determined by the Judge.

#### **5. My wife and I own the property together. The City has cited both of us. Can the City prosecute both of us for the same violations?**

Yes. The city may file criminal charges against one, some, or all of the owners of real property. Many times, however, if one spouse comes to court and pleads guilty or no contest, the City may "nolle" or dismiss, the case against the other spouse. If you are interested in taking responsibility for the premises, and asking that the case against your spouse be dismissed, discuss this with the City Prosecutor when your case is called.

#### **6. I do not own the property for which I was cited; I take care of it for my parents. Can I still be cited for the violations?**

Yes. In code violation cases, the City may choose to cite and bring criminal charges against the owner, the owner's agent or other person in control of the premises, or both.

**7. I have sold the property for which I was cited. Doesn't this resolve the case?**

No. The issue before the court is whether you were in control of the property as of the compliance date alleged in the complaint. Selling or transferring the property does not necessarily absolve you of criminal liability. However, if you sold the property *before* you were cited, you should bring a certified copy of the deed, showing the transfer date, with you to court.

**8. I have made all of the requested repairs, yet I received a court date in the mail. Do I still need to come to court?**

YES. DO NOT IGNORE YOUR COURT DATE. IF YOU FAIL TO COME TO COURT, A WARRANT MAY BE ISSUED FOR YOUR ARREST. The legal issue before the court is whether the violations alleged existed as of the compliance date. The Judge may consider repairs completed after the compliance date when deciding upon a sentence; however, repairs done after the compliance date may not constitute a defense to the charge. In addition, while you may know the repairs have been made, the information may not reach the City inspector, City prosecutor, and, most importantly, the Judge, if you do not come to court. If you have made the requested repairs, bring photographs showing the work with you to court.

**9. Will a housing code case be on my "permanent record?" Can it be removed?**

The code violations prosecuted in Housing Court are criminal violations. A finding of guilty will appear on your record as a criminal conviction. If all of the following apply, you may be entitled to have the record of your conviction sealed: It must be at least one year after your conviction (or the end of your probation, whichever is later), you must have no prior or subsequent criminal convictions, and there must be no criminal proceedings pending against you. If you meet these requirements you may file a motion, that is, a written request, to have your record sealed. The court will review the motion and consider any objections by the City prosecutor. If the court is satisfied that all requirements are met, and that sealing the record would be in the interest of justice, the court will order the record sealed. However, if you are later convicted of a similar offense, the sealed record may be considered by the court in that subsequent case. Sealed records generally remain accessible by law enforcement officials. However, the sealing of your record would allow you to truthfully state in an application for employment that you do not have any criminal convictions on your record, unless conviction bears a direct and substantial relationship to the position for which you are being considered.

**10. I am an elderly homeowner doing my best to maintain my property. Despite my efforts, I have been cited for code violations. Can Housing Court help me?**

The Housing Court employs Housing Court Specialist to assist the public with information about Ohio law and the City of Cleveland codified ordinances. The Judge may assign a Housing Court Specialist to assist a criminal defendant in locating sources of financing or grants to complete needed home repairs. Specialists assist the court by monitoring progress of work and reporting that progress to the court. The Specialists are located on the 13<sup>th</sup> floor of the Justice Center. They are available on a first come-first served basis, from 8:30 a.m. until 3:30 p.m., Monday through Friday. If you are interested in having a Housing Court Specialist assigned to your criminal case, ask the Judge at the time of your court hearing.

**This document is provided by the Housing Court for informational purposes only. It should not be taken or used as legal advice. The Court's Housing Specialists are not attorneys and will not provide you with legal advice. Each circumstance and case is unique; following the information contained herein does not guarantee a favorable outcome. If you have questions about your particular situation or would like guidance on how you should proceed, you should speak with an attorney.**